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Ohio Appeals Court Rules on First Amendment Challenge to Cincinnati Billboard Tax

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On June 18, 2020, Ohio's First District Court of Appeals (Hamilton County) issued its decision in *Lamar Advantage GP Company, LLC and Norton Outdoor Advertising, Inc. v. City of Cincinnati, Ohio*, 1st Dist. Hamilton No. C-180675, 2020-Ohio-3377 ("*Lamar*"). On the surface, the decision is applicable to a small number of companies (primarily Lamar and Norton, the two complainants) who rent out billboards in Cincinnati to advertisers. But the decision may have much wider implications, as it deals with the First Amendment's implications for statutory prohibitions on certain communications between a seller or lessor and its customer, including what language may be included on invoices. As discussed below, the Ohio CAT contains statutory language similar to that in Cincinnati's Outdoor Advertising Sign Excise Tax at issue in the decision.

The Outdoor Advertising Sign Excise Tax (for convenience, "billboard tax") was enacted by the City of Cincinnati ("the city") by Emergency Ordinance No. 167-2018, effective July 1, 2018. The tax is levied on "the privilege of installing, placing, and maintaining outdoor advertising signs in the city of Cincinnati," and equals the greater of seven percent of the gross receipts generated by a billboard or an annual minimum tax measured by the square footage of sign face on each billboard located in the city. The legal incidence of the tax falls on the "advertising host," the owner or operator of the billboard, as opposed to the "advertiser" who rents the space to present content to the public. "Gross receipts" means the consider-

ation paid the advertising host "for the installation, placement, or maintenance of, or license or other legal right to install, place, or maintain, an advertisement, message, or other content on an outdoor advertising sign."[1]

The statute explicitly states that it does not prohibit the advertising host from recovering the amount of the billboard tax by charging higher prices to its advertisers.[2] However, the advertising host does face the following prohibitions regarding the communication of the tax:

(a) The tax shall not be stated or charged separately from the rent or other consideration paid by an advertiser for use or occupancy of an outdoor advertising sign or shown separately on any record thereof, or otherwise reflected upon any bill, statement, or charge made for the sign's use or occupancy issued or delivered by the advertising host.

(b) No advertising host shall state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by an advertiser, or that it will be added to the rent or other charge.[3]

The Hamilton County Court of Common Pleas ("trial court"), after hearing evidence from the parties, declared the billboard tax unconstitutional under the First Amendment to the U.S. Constitution and enjoined the city from enforcing the tax. The city appealed, leading to the First District Court of Appeals' decision.

The Court of Appeals reviewed two assignments of error raised by the city regarding the trial court's decision. In its first assignment of error, the city argued that the trial court was wrong to apply strict scrutiny to the tax itself. This standard protects First Amendment rights by requiring the city to show a compelling governmental interest that the city could not have achieved without the discriminatory tax. The trial court considered the tax discriminatory because it is a tax on speech or on instruments utilized in exercising First Amendment rights, and it targets a small, narrow group to bear the burden of the tax: the handful of billboard operators qualifying as advertising hosts for purposes of the tax. The trial court found that the city was not able to show that the discriminatory tax was necessary to meet the compelling interest because there are other ways to raise revenue.

In evaluating that holding, the Court of Appeals found that *Clear Channel Outdoor, Inc. v. Dir., Dept. of Fin. Of Baltimore City*, 223 A.3d 1050 (Md.App. 2020) was persuasive. In reviewing a challenge to a similar tax on billboards, the *Clear Channel* court held that while a tax is suspect if it targets a small group of speakers, the reason is the fear of censorship of particular ideas or viewpoints. Heightened scrutiny under the First Amendment is also triggered if a tax discriminates on the basis of the content of taxpayer speech. The *Clear Channel* court, in upholding the tax, reasoned that "Maryland's billboard tax was content neutral in that the tax applied whenever an advertising host charged a fee to a third party,

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1 Cincinnati Municipal Code ("CMC") 313-1-G.
2 CMC 313-7(c).
3 CMC 313-7(a) – (b).

regardless of the advertiser's message."[4] Moreover, since the tax applied to all billboard owners and operators, it did not single out a small group of billboard operators, regardless of the actual number involved.

The Court of Appeals applied the same reasoning to the Cincinnati billboard tax. This tax is also content neutral because it "applies to billboards regardless of the message displayed."[5] Nor is there reason to believe the tax "will threaten to suppress the expression of certain viewpoints."[6] Finally, the "tax does not single out a particular group of billboard operators to bear the burden of the tax."[7] While the trial court determined that the tax "targets a small, narrow group of the media," the Court of Appeals explains that other factors led to the oligopoly in the Cincinnati billboard industry. "The tax itself did not single out a small group for taxation."[8] For these reasons, and because billboard operators, unlike traditional news organizations, do not display their own content, but rather the content of others, and this content, per the evidence presented below, has included "a myriad of messages from various corporate, nonprofit, and government agencies," the tax does not infringe on the First Amendment.[9] The Court of Appeals upheld the city's first assignment of error, allowing the billboard tax to stand.

The city's second assignment of error was that the trial court erred in separately enjoining the no-stating-the-tax provision of CMC 313-7, quoted above. As with the tax itself, the trial court had applied a strict scrutiny test to this provision, determining it to be "a content-based restriction on noncommercial speech." As summarized by the Court of Appeals, the trial court reasoned that "the provision was a calculated means for public officials to avoid accountability for the billboard tax and the inevitable increased advertising costs of billboards."[10]

The Court of Appeals rejected this finding of political motive as unsupported by the evidence and found the statutory language to be limited to communication between the billboard operator and its customer regarding the billboard space rental. As such, it found the regulated speech to be commercial speech, which is accorded a lower degree of protection under the First Amendment.

The test applied under the intermediate standard was developed in the U.S. Supreme Court decision, *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm.*, 447 U.S. 557, 566 (1980). The Supreme Court held that for commercial speech to be protected by the First Amendment, "it at least must concern lawful activity and not be misleading." Assuming this is the case, the next step is to determine whether the asserted governmental interest in regulating such speech is "substantial." If that too is affirmative, the court "must determine whether the

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4 Lamar at ¶ 35, paraphrasing Clear Channel.
5 Id. at ¶ 36.
6 Id.
7 Id.
8 Id. at ¶ 38.
9 Id. at ¶ 39.
10 Id. at ¶ 44.

regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." [11]

The Court of Appeals' application of the *Central Hudson* test to Cincinnati's billboard tax largely mirrors the federal Sixth Circuit's decision in B*ellSouth Telecommunications, Inc. v. Farris*, 542 F.3d 499 (6th Cir. 2008). In *BellSouth*, the Sixth Circuit applied the C*entral Hudson* four-pronged test to a telecommunications excise tax imposed by Kentucky. The Kentucky tax was also imposed on the provider, who was allowed to pass on the economic but not legal burden of the tax to consumers but was prohibited from stating the tax on an invoice to those consumers. The Sixth Circuit found the no-stating-the-tax provision to be unconstitutional under the intermediate scrutiny of the *Central Hudson* test.

In *Lamar*, the Court of Appeals first rejects the city's argument that the prohibited speech between advertising hosts and their customers is inherently misleading. Because the commercial speech in question concerns lawful activity and is not inherently misleading, it is subject to protection under the First Amendment. As such, the governmental interest in regulating the speech must be substantial. The Court of Appeals, following the Sixth Circuit's method in *BellSouth*, assumes the substantiality test is met by the government's interest in maintaining a distinction between an excise tax and a sales tax, and moves on to whether the government's means of regulating the proposed communication fails either of the two criteria regarding the "fit" of the regulation to the interest the government seeks to protect. As stated in *BellSouth*, "[j]ust as the directly advance requirement generally guards against underinclusive laws (those that do too little), the reasonable-fit requirement generally guards against overinclusive laws (those that do too much)." [12]

A notable difference of the billboard tax from the Kentucky telecom tax in *BellSouth* is that the billboard tax prohibits not only the separate statement of the tax on an invoice to the advertiser, but any direct or indirect statement by the advertising host that the advertiser will in some way be absorbing the cost of the tax.[13] It may be this additional provision that leads the Court of Appeals to refrain from passing judgment on the test's third prong, whether the tax directly advances the government interest. This is a departure from the Sixth Circuit's analysis in *BellSouth*, where the court found the law to be underinclusive because "the Commonwealth allows providers to tell their customers anything about the tax, no matter how confusing, in all settings save one: an invoice."[14] No matter whether the billboard tax passes the directly-advances prong or not, because it fails the reasonable-fit prong. "Just as in *BellSouth*, a simple disclaimer to the customers would clear up any would-be confusion that the billboard tax remains the operators' responsibility to pay."[15] Since alternatives such as this would not require the regulation of protected speech, the provision is over-inclusive and fails the final prong of the *Central Hudson* test regulating commercial speech under the First Amendment.

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11 Central Hudson at 566.
12 BellSouth at 508.
13 313-7(b), quoted in full above.
14 BellSouth at 507.
15 Lamar at ¶ 51.

Implications for the Ohio CAT and Other Taxes with Similar Provisions

The *Lamar* decision adds an Ohio court of appeals decision to the federal jurisprudence applying the Supreme Court's *Central Hudson* test to a tax provision's prohibition on the communication between a seller or lessor and its customer stating that the cost of an excise tax will be recovered from the customer, even though the cost recovery itself is allowed. Similar prohibitions continue to exist in the law, however: one prominent example in Ohio is in the Commercial Activity Tax. Ohio Revised Code 5751.02(B) states, in pertinent part: "The tax imposed by this section is a tax on the taxpayer and, shall not be billed or invoiced to another person." Like the taxes at issue in *BellSouth* and *Lamar*, the taxpayer is allowed to include "in the price charged for a good or service an amount sufficient to recover the tax," but they may not separately state the CAT on an invoice to the customer, as one would ordinarily do with a sales tax. The CAT provision is less broad than the prohibitions invalidated in *Lamar*, but not *BellSouth*. A fine distinction may be drawn between billing or invoicing the tax to a customer, and merely informing the customer of the amount of the tax while at the same time, on the same invoice, charging the customer the amount that will recover the cost of the tax to be paid by the vendor. However, we believe that *BellSouth* precludes the Ohio Department of Taxation from prohibiting the latter.

If you would like to discuss the Lamar decision or any other state and local tax matter, please contact Rich Farrin, Derek Heyman or any other ZHF professional.

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No. 22O154

In the Supreme Court of the United States

NEW HAMPSHIRE,

Plaintiff,

v.

MASSACHUSETTS,

Defendant.

BRIEF OF *AMICI CURIAE* STATES OF OHIO, ARKANSAS, INDIANA, KENTUCKY, LOUISIANA, MISSOURI, NEBRASKA, OKLAHOMA, TEXAS, AND UTAH IN SUPPORT OF NEW HAMPSHIRE'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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STATEMENT OF *AMICI* INTEREST

New Hampshire wants to sue Massachusetts in this Court.* Under the Court's precedent, it needs permission to do so. But under Article III and 28 U.S.C. §1251(a), it does not. The Constitution and an act of Congress give this Court mandatory original jurisdiction over cases between two States. The *amici* States urge this Court to recognize the mandatory nature of its jurisdiction in such cases. Until the Court does so, the States will continue to be denied their right of guaranteed access to this forum in interstate disputes.

SUMMARY OF ARGUMENT

New Hampshire, in accordance with this Court's rules, sought leave to file its bill of complaint against Massachusetts. This raises the following question: Does the Court have discretion *not* to decide original actions brought by one State against another? The answer to that question is "no." The Constitution and statutory law *both* require this Court to hear and decide all original interstate disputes.

Turning first to the Constitution, Article III gives this Court "original Jurisdiction" in cases "affecting Ambassadors, other public Ministers and Consuls, *and those in which a State shall be a Party*." U.S. Const. art. III, §2, cl.2 (emphasis added). It has "appellate Jurisdiction" in all other cases, "with such Exceptions … as the Congress shall make." *Id.* The Constitution, by granting Congress power to curtail

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* The *amici* States, as required by Rule 37.2(a), notified all parties of their intent to file this *amicus* brief more than ten days before its due date.

the Court's appellate jurisdiction, impliedly recognizes that Congress *lacks* authority to curtail the Court's original jurisdiction. *See Martin v. Hunter's Lessee*, 1 Wheat. 304, 332–33 (1816). In other words, the Court has jurisdiction over its original docket automatically, by virtue of the Constitution, without regard to any act of Congress. And that constitutionally conferred jurisdiction is necessarily mandatory, as courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).

The People vested this Court with mandatory jurisdiction over interstate disputes for a reason. One of the flaws in the Articles of Confederation was that it "created no judicial power" pursuant to which the States could secure resolution of their disputes. *Rhode Island v. Massachusetts*, 37 U.S. 657, 728 (1838). Why was this a flaw? Because sovereigns unable to resolve their disagreements in courts of law may resort to fields of battle. To avoid that dangerous form of dispute resolution, the Framers guaranteed the States a neutral forum in which their disputes would be "peaceably terminated." 3 Joseph Story, Commentaries on the Constitution of the United States §1632, p. 501 (1833); The Federalist No. 80 (A. Hamilton), p. 536 (Cooke ed., 1961). This Court must not deny the States what the Constitution guarantees them.

Congress cemented the mandatory nature of this Court's original jurisdiction over interstate disputes in 28 U.S.C. §1251(a). That section says: "The Supreme Court *shall* have original and *exclusive* jurisdiction of all controversies between two or more States." §1251(a) (emphasis added). This statute is

best read to confer mandatory jurisdiction in original disputes between two or more States. As an initial matter, nothing in §1251(a) confers any discretion not to decide interstate disputes. Congress's silence on the matter is telling in light of other statutes that *expressly* give this Court discretion to manage its docket. *See* 28 U.S.C. §§1254, 1257. In addition to the absence of any discretion-conferring language, the statute's grant of *exclusive* jurisdiction implies that the Court's jurisdiction is mandatory. Section 1251(a) establishes that when a controversy arises "between two States, this Court—and only this Court—has jurisdiction over it." *Nebraska v. Colorado*, 136 S. Ct. 1034, 1034 (2016) (Thomas, J., dissenting from the denial of motion for leave to file complaint). Given the critical importance of interstate disputes, it is hard to believe that Congress would empower this Court to refuse to hear cases that cannot be brought in any other forum. *See Arizona v. California*, 140 S. Ct. 684, 685 (2020) (Thomas, J., dissenting from denial of motion for leave to file complaint).

This Court, it is true, has claimed complete discretion over when to exercise its original jurisdiction. *See, e.g.*, *Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 497 (1971). But it has never explained how this discretion can be reconciled with the Constitution or §1251(a). Instead, the Court has justified the discretionary approach to its original docket with appeals to "prudential" policy considerations. *California v. Texas*, 457 U.S. 164, 168 (1982) (*per curiam*). More precisely, the Court has said that it lacks "'special competence in dealing with' many interstate disputes," and argued that hearing these cases would interfere with the Court's "modern role 'as an appel-

late tribunal.'" *Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting from the denial of motion for leave to file complaint) (quoting *Wyandotte*, 401 U.S. at 498). These justifications do not withstand scrutiny. First, "[p]rudential" considerations cannot override properly vested jurisdiction. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 572 U.S. 118, 128 (2014). But even if they could, the supposed prudential concerns do not justify a discretionary approach. Far from *lacking* special competence to resolve interstate disputes, this Court is the *only* forum with competence to do so. *See* §1251(a). And, given that this Court can appoint special masters to help it resolve the relatively small number of interstate disputes that proceed to litigation, the Court can fulfill its constitutional duty to review these original cases without being distracted from its role as an "appellate" tribunal.

Stare decisis perhaps counsels in favor of retaining discretionary jurisdiction in other original suits, like suits between a State and an out-of-state citizen, which may be numerous and can be brought in other courts. But *stare decisis* does not justify the Court in refusing to carry out its duty to resolve interstate disputes. *Arizona*, 140 S. Ct. at 685 (Thomas, J., dissenting from denial of motion for leave to file complaint); *California v. West Virginia*, 454 U.S. 1027, 1027 (1981) (Stevens, J., dissenting). To deny the States access to this Court in interstate disputes is to deny them an important part of the consideration they received for agreeing to join the Union. As such, *stare decisis* carries little force in deciding whether to retain the discretionary approach in its application to interstate disputes. *See South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2096 (2018).

ARGUMENT

I. This Court's original jurisdiction in cases between States is mandatory.

The Court should grant New Hampshire's motion for leave to file a bill of complaint. Indeed, it *must* grant the motion: the Constitution and 28 U.S.C. §1251(a) both require this Court to hear and decide original actions between two States.

A. The Constitution vests the "judicial Power" in federal courts. Art. III, §1. That power authorizes the courts to resolve various forms of "Cases" and "Controversies." *Id.*, §2. Indeed, the power *compels* courts to resolve cases and controversies over which they have jurisdiction. As Chief Justice Marshall recognized long ago, courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821).

To be sure, the obligation to exercise the judicial power in cases where jurisdiction is given does not compel federal courts to resolve those cases in any particular way. It does not, in other words, "eliminate" or "call into question, the federal courts' discretion in determining whether to grant certain types of relief." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989). For example, the judicial power no doubt includes the power to deny an award of equitable relief. *Id.* The judicial power also includes, presumably, the ability to resolve cases on non-merits grounds such as *forum non conveniens*. *See* David L. Shapiro, *Jurisdiction and Discretion*, 60 N.Y.U. L. Rev. 543, 555 (1985); *see also Gardner v. Thomas*, 14 Johns. 134, 137–38 (N.Y.

1817) (applying the doctrine). But regardless of the *way in which* courts resolve cases, their "'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). In writing that Courts must hear and decide cases over which they have jurisdiction, "Chief Justice Marshall did not add the disclaimer: except courts may refuse to hear an issue if they think it makes sense to demur under a balancing test" or some other rule of prudence. *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 749 (6th Cir. 2019).

In light of that principle, it is important to know what, exactly, this Court's jurisdiction consists of. Article III provides the starting point. It divides the Court's jurisdiction into original and appellate jurisdiction. U.S. Const. art. III, §2, cl.2; *see also Marbury v. Madison*, 1 Cranch 137, 175 (1803). The relevant language is as follows:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

U.S. Const. art. III, §2, cl.2.

The key difference between the grants of original and appellate jurisdiction is that Congress can make "Exceptions" to the Court's appellate jurisdiction but

not to its original jurisdiction; the express grant of authority to limit appellate jurisdiction implies that Congress has no authority to limit the Court's original jurisdiction. For if Congress had the power to limit the Court's jurisdiction over cases and controversies generally, there would be no need to expressly vest in Congress the power to limit the Court's appellate jurisdiction. *Martin v. Hunter's Lessee*, 1 Wheat. 304, 332–33 (1816). From this, it follows that the Court's original jurisdiction is mandatory. If Congress cannot make exceptions to the Court's original jurisdiction, and if courts are dutybound to hear and decide cases over which they have jurisdiction, *Cohens*, 6 Wheat. at 404, then there is no basis for inferring that this Court has any discretion over whether to hear and decide original matters. *Cf. Kansas v. Colorado*, 556 U.S. 98, 110 (2009) (Roberts, C.J., concurring).

The nature of the Constitution further supports the conclusion that the Court's original jurisdiction is mandatory. That "founding document specifically recognizes the States as sovereign entities." *Alden v. Maine*, 527 U.S. 706, 713 (1999) (quotation omitted). Sovereigns, of course, not infrequently have disagreements with one another. In general, when those disputes become intractable, they are often resolved through economic coercion (such as sanctions and tariffs) or war. The States, just like other sovereigns, can find themselves in standoffs against their peers. Yet, the Articles of Confederation "created no judicial power" pursuant to which those interstate disputes could be resolved. *Rhode Island v. Massachusetts*, 37 U.S. 657, 728 (1838). The Framers recognized this flaw; they understood that "domestic tranquility requires, that the contentions of states should be

peaceably terminated by a common judicatory." 3 Joseph Story, Commentaries on the Constitution of the United States §1632, p. 501 (1833). The Framers thus viewed the creation of a legal venue for resolving interstate disputes as "essential to the peace of the union." The Federalist No. 80 (A. Hamilton), p. 536 (Cooke ed., 1961). That is what Article III provides: a venue for resolving disputes that could "amount to *casus belli* if the States were fully sovereign." *South Carolina v. North Carolina*, 558 U.S. 256, 277 (2010) (Roberts, C.J., concurring in part and dissenting in part) (quoting *Texas v. New Mexico*, 462 U.S. 554, 571 n.18 (1983)). It would be surprising, to say the least, if the same document that opened the doors to this badly-needed forum simultaneously gave that forum unlimited discretion to shut its doors and turn the key.

B. Even if Congress *could* carve an exception into the Court's original jurisdiction over cases between States, Congress has not done that. To the contrary, Congress enacted the following statute: "The Supreme Court *shall* have original and *exclusive* jurisdiction of all controversies between two or more States." 28 U.S.C. §1251(a) (emphasis added). This statute makes clear that, when a controversy arises "between two States, this Court—and only this Court—has jurisdiction over it." *Nebraska v. Colorado*, 136 S. Ct. 1034, 1034 (2016) (Thomas, J., dissenting from the denial of motion for leave to file complaint). And for two main reasons, this jurisdictional grant is best understood as mandatory, not discretionary.

First, the statute does not say or imply that the jurisdiction it confers is discretionary. Its silence on the matter is especially conspicuous in light of other

statutes, passed alongside §1251, that *do* give this Court discretion to decide whether to hear a case. For example, the very same 1948 act that enacted §1251 contains other provisions that empower the Court, in cases arising under its appellate jurisdiction, to grant or deny writs of *certiorari* to federal courts of appeals and state courts. *See* Act of June 25, 1948, 80 Pub. L. 773, §§1254, 1257, 62 Stat. 869, 928–29. Tellingly, however, §1251 contains no discretion-conferring language. In that sense, §1251 is identical to other provisions included within the same act—for example, the provision giving this Court appellate jurisdiction over direct appeals from three-judge district courts, 28 U.S.C. §1253—that have long been understood to confer mandatory jurisdiction. *See Goldstein v. Cox*, 396 U.S. 471, 477–78 (1970); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2336 (2018) (Sotomayor, J., dissenting). Section 1251(a), just like §1253, gives this Court no discretion to decline to exercise jurisdiction. "The statute says what it says—or perhaps better put here, does not say what it does not say." *Cyan, Inc. v. Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1069 (2018).

Second, there is no reason to think that Congress *wanted* to give the Court discretion to decline jurisdiction over interstate disputes. Indeed, one finds contrary evidence in the fact that §1251(a) makes this Court's jurisdiction over such disputes "exclusive." The exclusivity means that when "this Court does not exercise jurisdiction over a controversy between two States, then the complaining State has no judicial forum in which to seek relief." *Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting from the denial of motion for leave to file complaint). It is both unreasonable and "inequitable" to read §1251(a)

as simultaneously making this Court the *exclusive* forum for resolving interstate disputes while at the same time allowing the Court to refuse, at its pleasure, to decide those disputes. *Arizona v. California*, 140 S. Ct. 684, 685 (2020) (Thomas, J., dissenting from denial of motion for leave to file complaint).

All told, as multiple Justices have recognized, §1251(a) must be read to confer mandatory original jurisdiction in interstate disputes. *See California v. West Virginia*, 454 U.S. 1027, 1027 (1981) (Stevens, J., dissenting); *Nebraska*, 136 S. Ct. at 1034 (Thomas, J., joined by Alito, J., dissenting from the denial of motion for leave to file complaint).

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Article III and §1251(a) require this Court to hear New Hampshire's claims against Massachusetts. Accordingly, this Court should grant the motion for leave to file a bill of complaint.

II. This Court's cases holding that original jurisdiction is discretionary should not be applied to disputes between States.

Although Article III is best read as conferring mandatory original jurisdiction when a "State shall be Party," this Court has interpreted the grant of original jurisdiction as conferring discretionary jurisdiction. *See Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 497 (1971). And, notwithstanding 28 U.S.C. §1251(a), this Court has applied its discretionary reading even in original actions between two or more States. *See Texas v. New Mexico*, 462 U.S. 554, 570 (1983); *California v. Texas*, 457 U.S. 164, 168 (1982) (*per curiam*); *Maryland v. Louisiana*, 451 U.S. 725, 739 (1981); *Arizona v. New Mexico*, 425

U.S. 794, 796 (1976) (*per curiam*); *see also Louisiana v. Texas*, 176 U.S. 1, 15 (1900). The Court should overrule these cases treating original jurisdiction as discretionary in the context of interstate disputes. Those cases are "grievously or egregiously wrong." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1414 (2020) (Kavanaugh, J., concurring in part). While *stare decisis* might justify retaining the discretionary approach in some types of original actions—for example, in actions between a State and an out-of-state citizen—it does not justify retaining this rule in its application to interstate disputes.

A. The decisions treating original jurisdiction as discretionary are products of an era in which "courts paid less attention to … text as the definitive expression of Congress's will" and the Constitution's meaning. *Barr v. Am. Ass'n of Pol. Consultants*, 140 S. Ct. 2335, 2349 (2020) (op. of Kavanaugh, J.). That is not meant to be an insult; it is what the Court said it was doing in deeming its original jurisdiction discretionary. In explaining its discretionary approach, the Court acknowledged that "it may initially have been contemplated that this Court would always exercise its original jurisdiction when properly called upon to do so." *Wyandotte*, 401 U.S. at 497. Based on a series of "policy considerations," however, the Court has "transform[ed] its mandatory, original jurisdiction into discretionary jurisdiction." *Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting from the denial of motion for leave to file complaint).

The "prudential" concerns that gave rise to this approach, *California*, 457 U.S. at 168, are explained best in *Wyandotte*—a case between Ohio and out-of-state citizens. *Wyandotte* deemed it "evident … that changes in the American legal system and the devel-

opment of American society have rendered untenable, as a practical matter, the view that this Court must" do what Article III requires. 401 U.S. at 497. According to the Court, it would be impractical to hear all suits brought by a State against out-of-state citizens given "the frequency with which States and nonresidents clash over the application of state laws." *Id*. Hearing every one of those cases would also be both unproductive and unnecessary, because federal courts have no "special competence" over such disputes and because the States can sue in some other forum. *Id*. at 497–98. What is more, focusing on those matters "would unavoidably" distract the Court from "matters of federal law and national import." *Id*. at 498. The Court thus determined that it may decline jurisdiction in any original matter between a State and an out-of-state citizen if: "(1) declination of jurisdiction would not disserve any of the principal policies underlying the Article III jurisdictional grant"; and "(2) the reasons of practical wisdom that persuade us that this Court is an inappropriate forum are consistent with the proposition that our discretion is legitimated by its use to keep this aspect of the Court's functions attuned to its other responsibilities." *Id*. at 499.

Wyandotte's reasoning "is inapplicable to cases" between two States. *West Virginia*, 454 U.S. at 1027 (Stevens, J., dissenting). Unlike cases brought by a State against out-of-state citizens, interstate disputes do not arise with great frequency. "As might be expected in view of the nature of the jurisdiction, the cases are few in which the aid of the court has been sought in controversies between two or more States." *Louisiana*, 176 U.S. at 18 (internal quotation marks omitted). And regardless of how many

interstate disputes arise, no other court is even *allowed* to hear them. *See* 28 U.S.C. §1251(a). Thus, there is no other forum in which the aggrieved State may seek relief. In contrast, States can always sue out-of-state citizens in some forum other than this one. *See* 28 U.S.C. §1251(b). Finally, because resolving interstate disputes is "essential to the peace of the Union," *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1495 (2019) (quotation omitted), all controversies between States are the very sort of cases—those involving issues of "national import"—for which *Wyandotte* claimed the Court needed to preserve its resources, 401 U.S. at 498. At the very least, there is no indication that the Court would be meaningfully distracted from issues of "national import" by allowing all suits between States to proceed. The Court can, and almost always does, appoint special masters to assist in these cases. *See, e.g.*, *Florida v. Georgia*, 138 S. Ct. 2502, 2508 (2018); *Texas v. New Mexico*, 138 S. Ct. 954, 958 (2018); *see also* Kristin A. Linsley, *Original Intent: Understanding the Supreme Court's Original Jurisdiction in Controversies Between States*, 18 J. App. Prac. & Process 21, 51–52 (2017). And the Court today decides far fewer cases than it did in the 1970s, when the Court decided *Wyandotte*. *See* Margaret Meriwether Cordray & Richard Cordray, *The Supreme Court's Plenary Docket*, 58 Wash & Lee L. Rev. 737, 737–38 (2001). Thus, there are fewer cases from which an increase in the number of original actions might distract.

Notwithstanding the inapplicability of *Wyandotte*'s reasoning to interstate disputes, this Court has declared that Article III and §1251(a) give it "substantial discretion to make case-by-case judgments as to the practical necessity of an original fo-

rum in this Court for particular disputes within [its] constitutional original jurisdiction." *Texas*, 462 U.S. at 570. True, the Court has described its original jurisdiction as "delicate and grave," *Louisiana*, 176 U.S. at 15, and it has often repeated the notion that its "original jurisdiction should be invoked sparingly," *Illinois v. Milwaukee*, 406 U.S. 91, 93 (1972) (quoting *Utah v. United States*, 394 U.S. 89, 95 (1969)). But the Court has never explained why that is true. It certainly has not provided a textual hook. In one case, the Court said that it "construe[d] 28 U.S.C. §1251" *and* "Art. III, §2, cl.2, to honor [its] original jurisdiction but to make it obligatory only in appropriate cases." *Illinois*, 406 U.S. at 93. That reasoning reflects "not a construction" of the relevant text, "but a rewriting of it." *State Bd. of Equalization of Cal. v. Young's Market Co.*, 299 U.S. 59, 62 (1936). There is simply no way to "construe" either the statute or the Constitution to bear that meaning. The discretionary approach to original jurisdiction is, for better or worse, a judge-made rule with no basis in the text.

B. It may be that *stare decisis* counsels against an outright abandonment of the rule that original jurisdiction is discretionary. But the same cannot be said for the rule's application to controversies between States. Indeed, the factors that generally inform the *stare decisis* analysis militate in favor of changing course.

First, *stare decisis* traditionally has less force in the constitutional context. That makes sense. When the Court interprets the Constitution, its reading "can be altered only by constitutional amendment or by overruling" earlier decisions. *Agostini v. Felton*, 521 U.S. 203, 235 (1997). Here, the question wheth-

er the Court has discretion to deny review in cases between States arises under the Constitution. Thus, at least with respect to the mandatory nature of Article III, *stare decisis* has only a weak pull.

Second, an "important factor in determining whether a precedent should be overruled is the quality of its reasoning." *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2479 (2018). As explained above, the cases holding that the Court has discretion not to decide cases over which it has original jurisdiction are poorly reasoned; each and every such decision rests on policy considerations, not legal principles. *See, e.g.*, *Texas*, 462 U.S. at 570; *California*, 457 U.S. at 168; *Maryland*, 451 U.S. at 739; *Arizona*, 425 U.S. at 796–97; *Illinois*, 406 U.S. at 93–94; *Wyandotte*, 401 U.S. at 497–99. This policy-driven approach embodies a kind of analysis the Court has abandoned in other areas. *Compare, e.g., J. I. Case Co. v. Borak,* 377 U.S. 426, 433 (1964) *and Allen v. Wright,* 468 U.S. 737, 751 (1984), *with*, *respectively, Alexander v. Sandoval,* 532 U.S. 275, 287 (2001) *and Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 572 U.S. 118, 128 (2014). The reasoning is especially weak with respect to the question whether jurisdiction is mandatory in State-versus-State disputes. In that context, none of the policy justifications for treating original jurisdiction as discretionary even apply. *See above* 12–14; *see also West Virginia*, 454 U.S. at 1027 (Stevens, J., dissenting). In sum, the discretionary approach is not just wrong, but "grievously or egregiously wrong," weakening the force of *stare decisis*. *Ramos*, 140 S. Ct. at 1414 (Kavanaugh, J., concurring in part); *accord Gamble v. United States*, 139 S. Ct. 1960, 1989 (2019) (Thomas, J., concurring).

Third, and most important of all, the policy-based rule prevents the States—the coequal sovereigns that united to form this country—from getting the full benefit of their constitutional bargain. *See Hyatt*, 139 S. Ct. at 1497–99. When precedent prevents "the States from exercising their lawful sovereign powers in our federal system, the court should be vigilant in correcting the error." *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2096 (2018). For all the reasons outlined above, this Court's cases claiming "substantial discretion to make case-by-case judgments as to the practical necessity of an original forum in this Court," *Texas*, 462 U.S. at 570, deny the States the adjudicatory forum they won when they ratified the Constitution or later joined the Union. The denial of that forum is serious because, by law, *see* §1251(a), there is no other court that can adjudicate interstate suits. Given the "want of another suitable forum," *Massachusetts v. Missouri*, 308 U.S. 1, 19 (1939), the Court's "discretionary approach" is especially injurious to the States, *Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting from the denial of motion for leave to file complaint).

Fourth, this is not a case where overruling settled precedent will unfairly prejudice those who have "acted in reliance on a previous decision." *Hilton v. S.C. Pub. Rys. Comm'n*, 502 U.S. 197, 202 (1991). Indeed, given the inherently unpredictable nature of the discretionary approach, it is hard to see how any State could have acted in reliance upon it.

Finally, and relatedly, the discretionary approach is "unworkable." *Montejo v. Louisiana*, 556 U.S. 778, 792 (2009). True, the doctrine is "workable" in the sense that it gives the Court complete discretion to do what it likes, making the doctrine impossible to

misapply. But it is unworkable in the sense that it provides neither the States nor the Court with any meaningful guidance. And when States are denied a forum in this Court, they have nowhere else to turn. *See Nebraska*, 136 S. Ct. at 1035 (Thomas, J., dissenting from the denial of motion for leave to file complaint); *West Virginia*, 454 U.S. at 1027 (Stevens, J., dissenting).

* * *

In sum, when one State files a bill of complaint against another State, this Court has mandatory jurisdiction over that suit. Although this Court has held otherwise, *stare decisis* does not justify retaining that rule. The Court should thus hold that it lacks power to deny leave to file a bill of complaint in an interstate dispute. On that basis, it should grant New Hampshire's motion.

CONCLUSION

This Court should grant the motion for leave to file a bill of complaint.

Respectfully submitted,

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[Cite as *Time Warner Cable, Inc. v. Cincinnati*, 2020-Ohio-4207.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

TIME WARNER CABLE, INC., & SUBSIDIARIES,	:	APPEAL NO. C-190375 TRIAL NO. 2017-1448
Plaintiff-Appellee,	:	*O P I N I O N.*
vs.		
CITY OF CINCINNATI,	:	
and	:	
TED NUSSMAN, TAX COMMISSIONER CITY OF CINCINNATI INCOME TAX DIVISION	:	
Defendants-Appellants.	:	

Appeal From: Ohio Board of Tax Appeals

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: August 26, 2020

Eversheds Sutherland (US) LLP, *Michael R. Nelson* and *Michael J. Hilkin*, for Plaintiff-Appellee Time Warner Cable, Inc., & Subsidiaries,

Paula Boggs Muething, City Solicitor, and *Shuva J. Paul*, Assistant City Solicitor, for Defendants-Appellants City of Cincinnati and Ted Nussman.

BERGERON, Judge.

{¶1} Although nothing may be as certain as death and taxes, perhaps cable bills fall in close behind. This case involves two of those three eventualities, with a cable provider trying to escape certain taxation imposed by the city of Cincinnati. More broadly, however, this case involves a clash between a municipality's right to tax pursuant to the constitutionally-engrained Home Rule Amendment and the General Assembly's ability to curtail that right. After careful review, we conclude that aspects of the city's municipal code must yield to the state statute, and we accordingly affirm the judgment below.

I.

{¶2} In late 2014, Time Warner Cable, Inc., and various subsidiaries (collectively, "Time Warner") filed its city of Cincinnati income tax return for the 2013 tax year. After its initial filing in 2014, Time Warner subsequently amended its return in 2015. Upon review of that filing, however, the city's Department of Finance Income Tax Division balked, notifying Time Warner that due to an adjustment, it owed a large sum in outstanding taxes and penalties. Time Warner protested, appealing this assessment to the local board of review as provided by former Cincinnati Municipal Code 311-97. Although Time Warner initially challenged three aspects of the city's assessment, the parties managed to resolve two of these issues, leaving the local board of review to sort out the interplay between the Cincinnati Municipal Code 311-11's and Regulation R11's (promulgated to aid the enforcement of Cincinnati Municipal Code Chapter 311) consolidated income tax return requirements, on the one hand, and the mandates of R.C. 718.06, on the other. The local board ultimately upheld the assessment, which required that Time Warner's consolidated return exclude certain subsidiaries that did not do business in

Cincinnati from the 2013 filing, resulting in hundreds of thousands of dollars in outstanding tax liability.

{¶3} The dispute, at its core, involves the federal tax concept of an "affiliated group" entitled to file "consolidated" tax returns. At the risk of oversimplifying these matters, the IRS permits "an affiliated group of corporations to file a consolidated federal return. See 26 U.S.C. § 1501. This serves as a convenience for the government and taxpayers alike." *Rodriguez v. FDIC*, __U.S.__, 140 S.Ct. 713, 716, 206 L.Ed.2d 62 (2020). The consolidated filing essentially simplifies the tax reporting process, particularly for corporations with subsidiaries scattered across geographic boundaries (like Time Warner) and it enables an "affiliated group" to offset losses by certain corporate family members against others. In this case, Time Warner sought to file a consolidated return with the city that mirrored the affiliated group that it used for its federal tax filing, but the city objected. Pointing to its ordinance, it told the cable conglomerate that its "affiliated group" could only encompass affiliated corporate entities actually doing business in Cincinnati.

{¶4} Unsatisfied with the local board's disposition of this question, Time Warner next turned to the Ohio Board of Tax Appeals ("BTA") for relief as provided by R.C. 5707.011, maintaining that the municipal code and accompanying regulation conflicted with former R.C. 718.06. Time Warner asserted that the General Assembly enjoyed the right to limit the municipal tax authority, and that it effectuated exactly that by virtue of the plain language of the statute that enabled Time Warner to file a consolidated filing replicating the members in its federal consolidated return. Before the BTA, the city of Cincinnati and Ted Nussman, Tax Commissioner for the City of Cincinnati Income Tax Division (collectively, the "City") countered that no such conflict existed because former R.C. 718.06 did not expressly

preempt the municipal ordinance, and therefore, the ordinance constituted a valid exercise of local taxation (with a nod to the Home Rule Amendment). The BTA, however, ultimately agreed with Time Warner, finding that the statute's plain language expressly required that a municipality accept a consolidated return from an affiliated group of corporations where the affiliated group as a whole (and not each individual corporation) was subject to the municipality's income tax.

{¶5} The City then commenced this appeal, framing a single assignment of error. Insisting that the BTA erred by reversing the decision of the local board of review, the City maintains that no express conflict existed between former Cincinnati Municipal Code 311-11 and Regulation R11 with former R.C. 718.06 and that Time Warner must file in accordance with those local requirements.

II.

{¶6} In reviewing a decision of the BTA, we generally do not sit as a de novo trier of fact, but where, as here, our task entails statutory construction, this constitutes a legal issue that we decide de novo on appeal. *New York Frozen Foods, Inc. v. Bedford Hts. Income Tax Bd. of Rev.*, 150 Ohio St.3d 386, 2016-Ohio-7582, 82 N.E.3d 1105, ¶ 8; *Gesler v. Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76, 2013-Ohio-4986, 3 N.E.3d 1177, ¶ 10. Therefore, under the circumstances presented here, we need not defer to the BTA's determination, but rather undertake our review de novo.

A.

{¶7} We begin our statutory interpretation journey with a prefatory stop at Article XVIII, Section 3 of the Ohio Constitution, known as the "Home Rule Amendment," which allows municipalities to exercise "all powers of local self-government." Central to this self-governing authority lies the power to tax. *Gesler* at

¶ 18; *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 605, 693 N.E.2d 212 (1998), quoting *Zielonka v. Carrel*, 99 Ohio St. 220, 227, 124 N.E. 134 (1919) ("The municipal taxing power is one of the 'powers of local self-government' expressly delegated by the people of the state to the people of municipalities."). But this power is not absolute (as the City readily acknowledges), as the Ohio Constitution also allows the General Assembly to pass laws "to limit the power of municipalities to levy taxes," Article XVIII, Section 13, Ohio Constitution, and to "restrict [municipal] power of taxation[.]" Article XIII, Section 6, Ohio Constitution. These provisions help frame the debate, as our "analysis turns on whether the General Assembly exercise[d] its power to limit or restrict the municipal taxing authority" through former R.C. 718.06. *Gesler* at ¶ 19.

{¶8} But the Supreme Court teaches us that, in exercising its power to restrict or limit municipal taxation, the General Assembly must do so expressly. *Cincinnati Bell* at 599 ("The taxing authority of a municipality may be preempted or otherwise prohibited only by an express act of the General Assembly."). Such a requirement flows from the constitutional division of labor: "the Constitution presumes that both the state and municipalities may exercise full taxing powers, unless the General Assembly has acted expressly to preempt municipal taxation, pursuant to its constitutional authority to do so." *Id.* at 607. Therefore, the power to preempt is not implicated "merely by virtue of the state's entering a particular area of taxation[.]" *Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev.*, 138 Ohio St.3d 495, 2014-Ohio-1011, 8 N.E.3d 904, ¶ 11, citing *Cincinnati Bell* at 605. In other words, no concept of implied preemption exists for purposes of regulating the municipal taxing authority by the General Assembly. *Id.* at ¶ 20 ("[I]n the context of *Cincinnati Bell's* reasoning, the requirement of 'an express act of restriction' means

only that the state does not preempt local taxes merely by enacting a similar tax of its own.").

{¶9} With the analytical table set, we now turn to the dueling statutory and municipal code provisions. Former R.C. 718.06 (in effect during time periods germane to this appeal) provided:

> [A]ny municipal corporation that imposes a tax on the income or net profits of corporations shall accept for filing a consolidated income tax return from any affiliated group of corporations subject to the municipal corporation's tax if that affiliated group filed for the same tax reporting period a consolidated return for federal income tax purposes pursuant to section 1501 of the Internal Revenue Code.

On the other side of the ledger, former Cincinnati Municipal Code 311-11(a) allowed an affiliated group of corporations to file a consolidated return if that affiliated group filed "for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code." The ordinance further explained, however, "[o]nly corporations subject to the tax imposed by this chapter may be included in such consolidated return filed for Municipal income tax purposes." Former Cincinnati Municipal Code 311-11(a). Underscoring the point, Regulation R11 provided that "[a] consolidated return must include all companies that are so affiliated and that conduct business in the Municipality." Former Regulation R11(A). The municipal code thus sharply limited the array of entities that could constitute part of a corporation's "affiliated group."

{¶10} In the City's eyes, this limitation ushers in no conflict with former R.C. 718.06 because the General Assembly failed to spell out all of the details for an "affiliated group" in the statute (an omission that the legislature corrected in a

subsequent enactment, 2014 Sub.H.B. 5). Bolstering this point, the City focuses on two aspects of the statute (1) the use of the indefinite article "a" before the phrase "consolidated income tax return," and (2) the phrase "subject to the municipal corporation's tax" as a restrictive modifier.

{¶11} In addressing the City's assertions, we are reminded that "[t]he first rule of statutory construction requires courts to look at the statute's language to determine its meaning. * * * Courts may not delete words used or insert words not used." *Cincinnati Community Kollel v. Testa*, 135 Ohio St.3d 219, 2013-Ohio-396, 985 N.E.2d 1236, ¶ 25. Therefore, while we acknowledge the statute's use of "a consolidated income tax return," we must also read that in conjunction with the phrase "from any affiliated group of corporations subject to the municipal corporation's tax," and the statute's anchoring these points with "pursuant to section 1501 of the Internal Revenue Code." *See Hauser v. Dayton Police Dept.*, 140 Ohio St.3d 268, 2014-Ohio-3636, 17 N.E.3d 554, ¶ 9 (noting that in construing statutes, courts do not pick out one sentence and disassociate it from context but construe the statute as a whole). Construing these aspects together, the statute ultimately identifies what type of consolidated return the City shall accept for filing, i.e., a filing from "any affiliated group of corporations" so long as that "affiliated group filed for the same tax reporting period a consolidated return for federal income tax purposes[.]" While the City imagines a multitude of "affiliated groups" within a corporation structure, the statute links the affiliated group to the one that made a federal income tax filing, refuting the City's interpretation. In our case, there is no dispute that the "affiliated group" presented by Time Warner comported with the affiliated group that filed a consolidated federal return. The statute blesses this exact maneuver and requires that municipalities "shall accept" such a return, whereas the

municipal code (in these circumstances) proscribes it. That showcases the direct conflict between the two.

{¶12} Endeavoring to portray harmony rather than conflict, the City features the phrase "subject to the municipal corporation's tax" as ratifying that the consolidated return may include only those entities doing business in the City by modifying the word "corporation" in this manner. But we are unconvinced by the City's grammatical parsing—after all, its conceptualization of "affiliated group" would render the General Assembly's later reference to the affiliated group having filed as such for federal purposes during the same taxable year meaningless. *See State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 19 (courts should avoid a construction of a statute that would render a provision meaningless or superfluous). The later reference to affiliated group by the statute as "that affiliated group" indicates that the affiliated group filing a consolidated return for municipal purposes is synonymous with the group filing for federal income tax purposes, not merely some subset of corporations subject to the municipal tax. That also strikes us as the most logical reading of the statute.

{¶13} We find our conclusion supported further by the General Assembly's particular utilization of "affiliated group" and reference to the Internal Revenue Code. While the General Assembly neglected to define "affiliated group" in former R.C. 718.06, it represents a term of art for federal tax purposes. *See* 26 U.S.C. 1504 (defining "affiliated group" as certain includible corporations connected through stock ownership with a parent company). In construing a statute, we must generally assign words their common usage, but "[w]ords and phrases that have acquired a technical or particular meaning * * * shall be construed accordingly." R.C. 1.42;

Youngstown Sheet & Tube Co. v. Lindley, 56 Ohio St.2d 303, 309, 383 N.E.2d 903 (1978) (applying the long-standing federal treatment of term to undefined statutory term); *Hoffman v. State Med. Bd. of Ohio*, 113 Ohio St.3d 376, 2007-Ohio-2201, 865 N.E.2d 1259, ¶ 26 (noting that, in construing statutes, where a word has a technical definition the statute shall be construed accordingly). Thus, the conspicuous appropriation of "affiliated group" while referencing federal tax principles further elucidates the statute's purpose, reinforcing our conclusion in the preceding paragraph. Conversely, the City's vision of "affiliated group" requires a definition cut from whole cloth.

{¶14} Based on the statute's plain language, we find that the General Assembly took clear and affirmative measures to limit the City's authority to impose the income tax in the manner it sought. *Cincinnati Bell*, 81 Ohio St.3d at 606, 693 N.E.2d 212 (municipal power to levy tax is to be considered valid "unless the General Assembly has acted affirmatively by exercising its constitutional prerogative."); *S.B. Carts, Inc. v. Put-in-Bay*, 161 Ohio App.3d 691, 2005-Ohio-3065, 831 N.E.2d 1052, ¶ 11 (6th Dist.) (ordinance was valid exercise of taxing power where General Assembly had not acted affirmatively to limit that power). This represents an appropriate exercise of the General Assembly's constitutional power, which extends to not only limit the imposition of taxes but "endows the General Assembly with the capability to circumscribe the imposition, raising, and collection of a municipal tax." *City of Athens v. Testa*, 2019-Ohio-277, 119 N.E.3d 469, ¶ 44 (10th Dist.) (interpreting the word "levy" in Article XVIII, Section 13, Ohio Constitution to permit the General Assembly to limit municipal power to impose, collect, and administer taxes); *Cincinnati Imaging Venture v. City of Cincinnati*, 116 Ohio App.3d 1, 4, 686 N.E.2d 528 (1st Dist.1996) (General Assembly allowed to regulate the levy and collection of

municipal tax as well as limiting the imposition of those taxes). To that point, the City does not protest that the General Assembly exceeded its constitutional bounds here.

{¶15} In short, the City urges us to adopt a construction of former R.C. 718.06 that would render aspects of the statute a hollow letter. But we "must presume that the language chosen by the General Assembly was intended to be effective." *State ex rel. Cincinnati Enquirer v. Pike Cty. Coroner's Office*, 153 Ohio St.3d 63, 2017-Ohio-8988, 101 N.E.3d 396, ¶ 22; *Griffith v. Aultman Hosp.*, 146 Ohio St.3d 196, 2016-Ohio-1138, 54 N.E.3d 1196, ¶ 18 (in interpreting a statute, the court's paramount concern is legislative intent, which should be sought first from the language of the statute and the words used). Thus, the statute expressly preempts aspects of former Cincinnati Municipal Code 311-11, because it specifically required municipalities to accept a consolidated income tax return from the same affiliated group which filed for federal income tax purposes.

B.

{¶16} Alternatively, the City posits that former R.C. 718.06 impermissibly compels the City to exercise a power of taxation. Contrary to the City's contention, however, it already exercised its power of taxation by imposing an income tax under Cincinnati Municipal Code Chapter 311. Former R.C. 718.06 constituted a valid limitation on that power, rather than any sort of impermissible compulsion. *See New York Frozen Foods, Inc.*, 150 Ohio St.3d 386, 2016-Ohio-7582, 82 N.E.3d 1105, at ¶ 30 ("Former R.C. 718.06 did limit local taxing authority[.]").

{¶17} Similarly (relying on 90-year-old caselaw) the City contends that the statute unlawfully forces it to exercise extraterritorial power by taxing beyond its borders. Even if former R.C. 718.06 required a municipality to tax extraterritorially

(which strikes us as a dubious proposition), a municipality may act extraterritorially where granted such authority by statute. *Springfield v. All Am. Food Specialists, Inc.*, 85 Ohio App.3d 464, 469, 620 N.E.2d 120 (2d Dist.1993) (territorial limitations of the Home Rule Amendment may be overcome where expressly granted by statute). *Prudential Co-op. Realty Co. v. City of Youngstown*, 118 Ohio St. 204, 211-212, 160 N.E. 695 (1928) (ordinance constitutional where statute conferred on municipality extraterritorial authority); *Tatco Dev., Ltd. v. Montgomery Cty., Ohio*, 2d Dist. Montgomery No. 18387, 2001 WL 28674, *6 (Jan. 12, 2001) (municipality may only exercise extraterritorial authority if granted such by the legislature). As we already concluded above, the statute requires the City to accept a consolidated filing from an affiliated group that filed as such for federal purposes, negating any concerns that the City might transgress the limits of its authority.

{¶18} Finally, the City asserts that even if Time Warner "submitted the consolidated return it preferred * * * it would still have to abide by the City's accounting and apportionment methods" under Regulation R11. But to the extent that Regulation R11 limited the filing of a consolidated return by an affiliated group, it too stands in conflict with R.C. 718.06 and suffers the same preemptive fate. Regardless, we need not ponder the nuances of Time Warner's tax liability with the City—we need only decide the statutory interpretation question presented to us.

{¶19} In light of the preceding analysis, we affirm the decision of the BTA and overrule the City's sole assignment of error.

Judgment affirmed.

MYERS, P.J., and **CROUSE, J.,** concur.

Please note:
The court has recorded its own entry this date.

Board of Tax Appeals Remands Appeal to Tax Commissioner for Failure to Address All Arguments Raised by Taxpayers

September 11, 2020

Richard C. Farrin, JD
Member

Derek K. Heyman, PhD, JD, CPA
Attorney

The Ohio First District Court of Appeals (Hamilton County) has issued a decision in *Time Warner Cable, Inc., & Subsidiaries v. City of Cincinnati*, 2020-Ohio-4207, allowing the taxpayer to file its 2013 Cincinnati municipal income tax return using its federal consolidated group. The decision affirms the Board of Tax Appeals' May 31, 2019 ruling that former Ohio Revised Code ("R.C.") 718.06 required a municipality to accept a consolidated return from an affiliated group of corporations where the affiliated group as a whole, rather than each individual corporation, was subject to the municipality's income tax.

The decision concerns Time Warner's 2013 municipal income tax return and was thus decided under Chapter 718 as it existed prior to the passage of House Bill 5. House Bill 5's revision to R.C. 718.06 has since made it abundantly clear that, beginning with 2016 tax years, cities must allow an elective consolidated filing where the taxpayer files a federal consolidated return, and that the affiliated group making up that return is defined by section 1504 of the Internal Revenue Code ("I.R.C.").

In *Time Warner*, the court had to decide whether a conflict exists between former R.C. 718.06 and former Cincinnati Municipal Code ("C.M.C.") 311-11 (and associated Regulation R11). If the state and city codes are in conflict, then pursuant to Article XVIII, Section 13 of the Ohio Constitution the state statute controls as long as it was an "express act of the General Assembly" that preempted the taxing authority of Cincinnati under the Ohio Constitution's Home Rule Amendment (Article XVIII Section 3).

Cincinnati argued that there was no express act of the General Assembly to limit its own authority to define the nature of the consolidated group allowed to file, because former R.C. 718.06 does not conflict with former CMC 311-11. This ordinance, while allowing the filing of a consolidated return to those corporations that filed a federal consolidated return in the same tax year, limited the members of the Cincinnati consolidated return group to "only corporations subject to the tax imposed by this chapter," i.e., only those corporations that had nexus with Cincinnati. The City argued that former R.C. 718.06 did not define the nature of the consolidated group to which it referred, leaving Cincinnati the authority to define the consolidated group as those members of the affiliated group having nexus with the City.

The Court of Appeals, however, disagreed with this reading of former R.C. 718.06, stating that "[w]hile the City imagines a multitude of 'affiliated groups' within a corporation structure, the statute links the affiliated group to the one that made a federal income tax filing." The court's reading is based on the fact that former R.C. 718.06 refers to only one affiliated group, "the one that made a federal income tax filing." In addition to construing the grammatical structure of the statute as requiring the identity of the federal affiliated group with the one whose filing the municipality is required to accept, the court also finds support in the General Assembly's use of the term "affiliated group" and reference to the I.R.C. While former R.C. 718.06 did not specifically define "affiliated group," the I.R.C. does. Referring to R.C. 1.42's directive that "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly," together with the reference in R.C. 718.06 to the I.R.C., the court determined that "affiliated group" as used in R.C. 718.06 is such a technical term and must be given the meaning it contains in the I.R.C.

Thus, based on its reading of the statute, the court in *Time Warner* found that "the General Assembly took clear and affirmative measures to limit the City's authority to impose the income tax in the manner it sought." These clear and affirmative measures work as the express preemption required to override a municipality's taxation authority under the Home Rule Amendment.

The court also rejected the City's argument that R.C. 718.06 impermissibly required the City to impose its tax on federal affiliated groups, stating that R.C. 718.06 was a limitation on the City's power of taxation, a power which the City had already exercised. Finally, the court rejected the City's argument that the statute required it to exercise its taxation power extraterritorially.

Ultimately, the court held that R.C. 718.06 was a proper limitation on the City's power of taxation and that it required the City to accept Time Warner's 2013 tax return comprised of Time Warner's federal consolidated group.

If you would like to discuss *Time Warner* or any appeal issues you may have, please contact Rich Farrin, Derek Heyman or any other ZHF professional.

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(133rd General Assembly)
(Amended Substitute House Bill Number 197)

AN ACT

To amend sections 122.075, 125.831, 131.45, 133.01, 133.06, 133.07, 133.18, 135.142, 305.31, 306.322, 307.671, 307.672, 307.674, 307.678, 307.695, 319.301, 321.03, 321.20, 323.154, 323.155, 351.01, 351.03, 351.141, 718.01, 718.021, 929.01, 1545.041, 1545.21, 1711.15, 1711.16, 3316.03, 3316.06, 3317.01, 4301.20, 4582.024, 4582.26, 4582.56, 4723.43, 4729.01, 4761.17, 5104.31, 5701.08, 5701.11, 5701.12, 5703.04, 5703.211, 5703.54, 5703.94, 5703.95, 5705.03, 5705.13, 5705.19, 5705.195, 5705.213, 5705.252, 5705.29, 5705.315, 5705.34, 5705.35, 5705.36, 5705.49, 5709.201, 5709.43, 5709.48, 5709.53, 5709.61, 5709.80, 5709.85, 5709.93, 5713.03, 5713.30, 5713.351, 5715.13, 5715.36, 5721.06, 5721.191, 5721.39, 5725.98, 5726.50, 5726.98, 5727.02, 5727.11, 5727.23, 5727.32, 5727.33, 5727.80, 5727.83, 5727.84, 5729.98, 5733.042, 5733.05, 5733.052, 5733.055, 5733.40, 5733.98, 5735.026, 5735.06, 5739.01, 5739.011, 5739.02, 5739.021, 5739.028, 5739.03, 5739.034, 5739.08, 5739.09, 5739.21, 5740.02, 5743.05, 5743.08, 5743.33, 5743.65, 5745.14, 5747.01, 5747.011, 5747.012, 5747.013, 5747.02, 5747.058, 5747.061, 5747.07, 5747.082, 5747.11, 5747.231, 5747.41, 5747.51, 5747.52, 5747.55, 5747.98, 5748.08, 5748.09, 5751.01, 5751.08, 5751.09, 5751.50, 5751.51, 5751.98, and 5753.11; to enact sections 4723.433, 4723.434, 4723.435, 5739.091, 5739.092, 5751.40, 5751.41, and 5751.42; and to repeal sections 901.13, 5705.211, 5727.87, 5733.46, 5739.105, 5747.75, and 5751.23 of the Revised Code and to amend Section 757.40 of H.B. 166 of the 133rd General Assembly to continue essential operations of state government and maintain the continuity of the state tax code in response to the declared pandemic and global health emergency related to COVID-19, to make appropriations, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 122.075, 125.831, 131.45, 133.01, 133.06, 133.07, 133.18, 135.142, 305.31, 306.322, 307.671, 307.672, 307.674, 307.678, 307.695, 319.301, 321.03, 321.20, 323.154, 323.155, 351.01, 351.03, 351.141, 718.01, 718.021, 929.01, 1545.041, 1545.21, 1711.15, 1711.16, 3316.03, 3316.06, 3317.01, 4301.20, 4582.024, 4582.26, 4582.56, 4723.43, 4729.01, 4761.17, 5104.31, 5701.08, 5701.11, 5701.12, 5703.04, 5703.211, 5703.54, 5703.94, 5703.95, 5705.03, 5705.13, 5705.19, 5705.195, 5705.213, 5705.252, 5705.29, 5705.315, 5705.34, 5705.35, 5705.36,

5705.49, 5709.201, 5709.43, 5709.48, 5709.53, 5709.61, 5709.80, 5709.85, 5709.93, 5713.03, 5713.30, 5713.351, 5715.13, 5715.36, 5721.06, 5721.191, 5721.39, 5725.98, 5726.50, 5726.98, 5727.02, 5727.11, 5727.23, 5727.32, 5727.33, 5727.80, 5727.83, 5727.84, 5729.98, 5733.042, 5733.05, 5733.052, 5733.055, 5733.40, 5733.98, 5735.026, 5735.06, 5739.01, 5739.011, 5739.02, 5739.021, 5739.028, 5739.03, 5739.034, 5739.08, 5739.09, 5739.21, 5740.02, 5743.05, 5743.08, 5743.33, 5743.65, 5745.14, 5747.01, 5747.011, 5747.012, 5747.013, 5747.02, 5747.058, 5747.061, 5747.07, 5747.082, 5747.11, 5747.231, 5747.41, 5747.51, 5747.52, 5747.55, 5747.98, 5748.08, 5748.09, 5751.01, 5751.08, 5751.09, 5751.50, 5751.51, 5751.98, and 5753.11 be amended and sections 4723.433, 4723.434, 4723.435, 5739.091, 5739.092, 5751.40, 5751.41, and 5751.42 of the Revised Code be enacted to read as follows:

Sec. 122.075. (A) As used in this section:

(1) "Alternative fuel" has the same meaning as in section 125.831 of the Revised Code.

(2) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents, and that meets American society for testing and materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

(3) "Diesel fuel" and "gasoline" have the same meanings as in section 5735.01 of the Revised Code.

(4) "Ethanol" ~~has the same meaning as in section 5733.46 of the Revised Code~~means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the American society for testing and materials (ASTM) specification D 4806-88 and is denatured as specified in Parts 20 and 21 of Title 27 of the Code of Federal Regulations.

(5) "Blended biodiesel" means diesel fuel containing at least twenty per cent biodiesel by volume.

(6) "Blended gasoline" means gasoline containing at least eighty-five per cent ethanol by volume.

(7) "Incremental cost" means either of the following:

(a) The difference in cost between blended gasoline and gasoline containing ten per cent or less ethanol at the time that the blended gasoline is purchased;

(b) The difference in cost between blended biodiesel and diesel fuel containing two per cent or less biodiesel at the time that the blended biodiesel is purchased.

(B) For the purpose of improving the air quality in this state, the director of development services shall establish an alternative fuel transportation program under which the director may make grants and loans to businesses, nonprofit organizations, public school systems, or local governments for the purchase and installation of alternative fuel refueling or distribution facilities and terminals, for the purchase and use of alternative fuel, to pay the cost of fleet conversion, and to pay the costs of educational and promotional materials and activities intended for prospective alternative fuel consumers, fuel marketers, and others in order to increase the availability and use of alternative fuel.

(C) The director, in consultation with the director of agriculture, shall adopt rules in

accordance with Chapter 119. of the Revised Code that are necessary for the administration of the alternative fuel transportation program. The rules shall establish at least all of the following:

(1) An application form and procedures governing the application process for receiving funds under the program;

(2) A procedure for prioritizing the award of grants and loans under the program. The procedures shall give preference to all of the following:

(a) Publicly accessible refueling facilities;

(b) Entities applying to the program that have secured funding from other sources, including, but not limited to, private or federal incentives;

(c) Entities that have presented compelling evidence of demand in the market in which the facilities or terminals will be located;

(d) Entities that have committed to utilizing purchased or installed facilities or terminals for the greatest number of years;

(e) Entities that will be purchasing or installing facilities or terminals for any type of alternative fuel.

(3) A requirement that the maximum incentive for the purchase and installation of an alternative fuel refueling or distribution facility or terminal be eighty per cent of the cost of the facility or terminal, except that at least twenty per cent of the total cost of the facility or terminal shall be incurred by the recipient and not compensated for by any other source;

(4) A requirement that the maximum incentive for the purchase of alternative fuel be eighty per cent of the cost of the fuel or, in the case of blended biodiesel or blended gasoline, eighty per cent of the incremental cost of the blended biodiesel or blended gasoline;

(5) Any other criteria, procedures, or guidelines that the director determines are necessary to administer the program, including fees, charges, interest rates, and payment schedules.

(D) An applicant for a grant or loan under this section that sells motor vehicle fuel at retail shall agree that if the applicant receives funding, the applicant will report to the director the gallon or gallon equivalent amounts of alternative fuel the applicant sells at retail in this state for a period of three years after the project is completed.

The director shall enter into a written confidentiality agreement with the applicant regarding the gallon or gallon equivalent amounts sold as described in this division, and upon execution of the agreement this information is not a public record.

(E) There is hereby created in the state treasury the alternative fuel transportation fund. The fund shall consist of money transferred to the fund under division (B) of section 125.836 of the Revised Code, money that is appropriated to it by the general assembly, money as may be specified by the general assembly from the advanced energy fund created by section 4928.61 of the Revised Code, and all money received from the repayment of loans made from the fund or in the event of a default on any such loan. Money in the fund shall be used to make grants and loans under the alternative fuel transportation program and by the director in the administration of that program.

Sec. 125.831. As used in sections 125.831 to 125.834 of the Revised Code:

(A) "Alternative fuel" means any of the following fuels used in a motor vehicle:

(1) E85 blend fuel;

(2) Blended biodiesel;

(3) Natural gas;

(4) Liquefied petroleum gas;

(5) Hydrogen;

(6) Compressed air;

(7) Any power source, including electricity;

(8) Any fuel not described in divisions (A)(1) to (7) of this section that the United States department of energy determines, by final rule, to be substantially not petroleum, and that would yield substantial energy security and environmental benefits.

(B) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents that meets the American society for testing and materials specification for biodiesel fuel (B100) blend stock distillate fuels and any other standards that the director of administrative services adopts by rule.

(C) "Blended biodiesel" means a blend of biodiesel with petroleum based diesel fuel in which the resultant product contains not less than twenty per cent biodiesel that meets the American society for testing and materials specification for blended diesel fuel and any other standards that the director of administrative services adopts by rule.

(D) "Diesel fuel" means any liquid fuel that is capable of use in discrete form or as a blend component in the operation of engines of the diesel type.

(E) "E85 blend fuel" means fuel containing eighty-five per cent or more ethanol as defined in section ~~5733.46~~ 122.075 of the Revised Code or containing any other percentage of not less than seventy per cent ethanol if the United States department of energy determines, by rule, that the lower percentage is necessary to provide for the requirements of cold start, safety, or vehicle functions, and that meets the American society for testing and materials specification for E85 blend fuel and any other standards that the director of administrative services adopts by rule.

(F) "Law enforcement officer" means an officer, agent, or employee of a state agency upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, but does not include such an officer, agent, or employee if that duty and authority is location specific.

(G)(1) "Motor vehicle" means any automobile, car minivan, cargo van, passenger van, sport utility vehicle, or pickup truck with a gross vehicle weight of under twelve thousand pounds.

(2) "Motor vehicle" does not include, except for the purposes of division (C) of section 125.832 of the Revised Code, any vehicle described in division (G)(1) of this section that is used by a law enforcement officer and law enforcement agency or any vehicle that is so described and that is equipped with specialized equipment that is not normally found in such a vehicle and that is used to carry out a state agency's specific and specialized duties and responsibilities.

(H) "Specialized equipment" does not include standard mobile radios with no capabilities other than voice communication, exterior and interior lights, or roof-mounted caution lights.

(I) "State agency" means every organized body, office, board, authority, commission, or agency established by the laws of the state for the exercise of any governmental or quasi-governmental function of state government regardless of the funding source for that entity, other than any state institution of higher education, the office of the governor, lieutenant governor, auditor of state, treasurer of state, secretary of state, or attorney general, the general assembly or any legislative

agency, the courts or any judicial agency, or any state retirement system or retirement program established by or referenced in the Revised Code.

(J) "State institution of higher education" has the same meaning as in section 3345.011 of the Revised Code.

Sec. 131.45. (A) The amount the general assembly appropriates from the general revenue fund each year per pupil for primary and secondary educational purposes shall be not less than the amount it appropriated per pupil for those purposes for the base year, adjusted for changes in prices as measured by the consumer price index (all urban consumers, all items) prepared by the bureau of labor statistics of the United States department of labor. The base year is fiscal year 1999.

(B) Appropriations of the ~~proceeds of the sales and use tax levied by sections 5739.029 and 5741.024 of the Revised Code and of the~~ net proceeds of any state lottery under Section 6 of Article XV of the Ohio Constitution shall be in addition to appropriations made pursuant to this section.

(C) For the purposes of this section, appropriations for primary and secondary educational purposes includes amounts appropriated to reimburse school districts for property tax reductions required by law.

Sec. 133.01. As used in this chapter, in sections 9.95, 9.96, and 2151.655 of the Revised Code, in other sections of the Revised Code that make reference to this chapter unless the context does not permit, and in related proceedings, unless otherwise expressly provided:

(A) "Acquisition" as applied to real or personal property includes, among other forms of acquisition, acquisition by exercise of a purchase option, and acquisition of interests in property, including, without limitation, easements and rights-of-way, and leasehold and other lease interests initially extending or extendable for a period of at least sixty months.

(B) "Anticipatory securities" means securities, including notes, issued in anticipation of the issuance of other securities.

(C) "Board of elections" means the county board of elections of the county in which the subdivision is located. If the subdivision is located in more than one county, "board of elections" means the county board of elections of the county that contains the largest portion of the population of the subdivision or that otherwise has jurisdiction in practice over and customarily handles election matters relating to the subdivision.

(D) "Bond retirement fund" means the bond retirement fund provided for in section 5705.09 of the Revised Code, and also means a sinking fund or any other special fund, regardless of the name applied to it, established by or pursuant to law or the proceedings for the payment of debt charges. Provision may be made in the applicable proceedings for the establishment in a bond retirement fund of separate accounts relating to debt charges on particular securities, or on securities payable from the same or common sources, and for the application of moneys in those accounts only to specified debt charges on specified securities or categories of securities. Subject to law and any provisions in the applicable proceedings, moneys in a bond retirement fund or separate account in a bond retirement fund may be transferred to other funds and accounts.

(E) "Capitalized interest" means all or a portion of the interest payable on securities from their date to a date stated or provided for in the applicable legislation, which interest is to be paid from the proceeds of the securities.

(F) "Chapter 133. securities" means securities authorized by or issued pursuant to or in

accordance with this chapter.

(G) "County auditor" means the county auditor of the county in which the subdivision is located. If the subdivision is located in more than one county, "county auditor" means the county auditor of the county that contains the highest amount of the tax valuation of the subdivision or that otherwise has jurisdiction in practice over and customarily handles property tax matters relating to the subdivision. In the case of a county that has adopted a charter, "county auditor" means the officer who generally has the duties and functions provided in the Revised Code for a county auditor.

(H) "Credit enhancement facilities" means letters of credit, lines of credit, stand-by, contingent, or firm securities purchase agreements, insurance, or surety arrangements, guarantees, and other arrangements that provide for direct or contingent payment of debt charges, for security or additional security in the event of nonpayment or default in respect of securities, or for making payment of debt charges to and at the option and on demand of securities holders or at the option of the issuer or upon certain conditions occurring under put or similar arrangements, or for otherwise supporting the credit or liquidity of the securities, and includes credit, reimbursement, marketing, remarketing, indexing, carrying, interest rate hedge, and subrogation agreements, and other agreements and arrangements for payment and reimbursement of the person providing the credit enhancement facility and the security for that payment and reimbursement.

(I) "Current operating expenses" or "current expenses" means the lawful expenditures of a subdivision, except those for permanent improvements and for payments of debt charges of the subdivision.

(J) "Debt charges" means the principal, including any mandatory sinking fund deposits and mandatory redemption payments, interest, and any redemption premium, payable on securities as those payments come due and are payable. The use of "debt charges" for this purpose does not imply that any particular securities constitute debt within the meaning of the Ohio Constitution or other laws.

(K) "Financing costs" means all costs and expenses relating to the authorization, including any required election, issuance, sale, delivery, authentication, deposit, custody, clearing, registration, transfer, exchange, fractionalization, replacement, payment, and servicing of securities, including, without limitation, costs and expenses for or relating to publication and printing, postage, delivery, preliminary and final official statements, offering circulars, and informational statements, travel and transportation, underwriters, placement agents, investment bankers, paying agents, registrars, authenticating agents, remarketing agents, custodians, clearing agencies or corporations, securities depositories, financial advisory services, certifications, audits, federal or state regulatory agencies, accounting and computation services, legal services and obtaining approving legal opinions and other legal opinions, credit ratings, redemption premiums, and credit enhancement facilities. Financing costs may be paid from any moneys available for the purpose, including, unless otherwise provided in the proceedings, from the proceeds of the securities to which they relate and, as to future financing costs, from the same sources from which debt charges on the securities are paid and as though debt charges.

(L) "Fiscal officer" means the following, or, in the case of absence or vacancy in the office, a deputy or assistant authorized by law or charter to act in the place of the named officer, or if there is no such authorization then the deputy or assistant authorized by legislation to act in the place of the

named officer for purposes of this chapter, in the case of the following subdivisions:

(1) A county, the county auditor;

(2) A municipal corporation, the city auditor or village clerk or clerk-treasurer, or the officer who, by virtue of a charter, has the duties and functions provided in the Revised Code for the city auditor or village clerk or clerk-treasurer;

(3) A school district, the treasurer of the board of education;

(4) A regional water and sewer district, the secretary of the board of trustees;

(5) A joint township hospital district, the treasurer of the district;

(6) A joint ambulance district, the clerk of the board of trustees;

(7) A joint recreation district, the person designated pursuant to section 755.15 of the Revised Code;

(8) A detention facility district or a district organized under section 2151.65 of the Revised Code or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, the county auditor of the county designated by law to act as the auditor of the district;

(9) A township, a fire district organized under division (C) of section 505.37 of the Revised Code, or a township police district, the fiscal officer of the township;

(10) A joint fire district, the clerk of the board of trustees of that district;

(11) A regional or county library district, the person responsible for the financial affairs of that district;

(12) A joint solid waste management district, the fiscal officer appointed by the board of directors of the district under section 343.01 of the Revised Code;

(13) A joint emergency medical services district, the person appointed as fiscal officer pursuant to division (D) of section 307.053 of the Revised Code;

(14) A fire and ambulance district, the person appointed as fiscal officer under division (B) of section 505.375 of the Revised Code;

(15) A subdivision described in division (MM)~~(19)~~ (20) of this section, the officer who is designated by law as or performs the functions of its chief fiscal officer;

(16) A joint police district, the treasurer of the district;

(17) A lake facilities authority, the fiscal officer designated under section 353.02 of the Revised Code;

(18) A regional transportation improvement project, the county auditor designated under section 5595.10 of the Revised Code.

(M) "Fiscal year" has the same meaning as in section 9.34 of the Revised Code.

(N) "Fractionalized interests in public obligations" means participations, certificates of participation, shares, or other instruments or agreements, separate from the public obligations themselves, evidencing ownership of interests in public obligations or of rights to receive payments of, or on account of, principal or interest or their equivalents payable by or on behalf of an obligor pursuant to public obligations.

(O) "Fully registered securities" means securities in certificated or uncertificated form, registered as to both principal and interest in the name of the owner.

(P) "Fund" means to provide for the payment of debt charges and expenses related to that payment at or prior to retirement by purchase, call for redemption, payment at maturity, or otherwise.

(Q) "General obligation" means securities to the payment of debt charges on which the full faith and credit and the general property taxing power, including taxes within the tax limitation if available to the subdivision, of the subdivision are pledged.

(R) "Interest" or "interest equivalent" means those payments or portions of payments, however denominated, that constitute or represent consideration for forbearing the collection of money, or for deferring the receipt of payment of money to a future time.

(S) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1 et seq., as amended, and includes any laws of the United States providing for application of that code.

(T) "Issuer" means any public issuer and any nonprofit corporation authorized to issue securities for or on behalf of any public issuer.

(U) "Legislation" means an ordinance or resolution passed by a majority affirmative vote of the then members of the taxing authority unless a different vote is required by charter provisions governing the passage of the particular legislation by the taxing authority.

(V) "Mandatory sinking fund redemption requirements" means amounts required by proceedings to be deposited in a bond retirement fund for the purpose of paying in any year or fiscal year by mandatory redemption prior to stated maturity the principal of securities that is due and payable, except for mandatory prior redemption requirements as provided in those proceedings, in a subsequent year or fiscal year.

(W) "Mandatory sinking fund requirements" means amounts required by proceedings to be deposited in a year or fiscal year in a bond retirement fund for the purpose of paying the principal of securities that is due and payable in a subsequent year or fiscal year.

(X) "Net indebtedness" has the same meaning as in division (A) of section 133.04 of the Revised Code.

(Y) "Obligor," in the case of securities or fractionalized interests in public obligations issued by another person the debt charges or their equivalents on which are payable from payments made by a public issuer, means that public issuer.

(Z) "One purpose" relating to permanent improvements means any one permanent improvement or group or category of permanent improvements for the same utility, enterprise, system, or project, development or redevelopment project, or for or devoted to the same general purpose, function, or use or for which self-supporting securities, based on the same or different sources of revenues, may be issued or for which special assessments may be levied by a single ordinance or resolution. "One purpose" includes, but is not limited to, in any case any off-street parking facilities relating to another permanent improvement, and:

(1) Any number of roads, highways, streets, bridges, sidewalks, and viaducts;

(2) Any number of off-street parking facilities;

(3) In the case of a county, any number of permanent improvements for courthouse, jail, county offices, and other county buildings, and related facilities;

(4) In the case of a school district, any number of facilities and buildings for school district purposes, and related facilities.

(AA) "Outstanding," referring to securities, means securities that have been issued, delivered, and paid for, except any of the following:

(1) Securities canceled upon surrender, exchange, or transfer, or upon payment or redemption;

(2) Securities in replacement of which or in exchange for which other securities have been issued;

(3) Securities for the payment, or redemption or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the applicable legislation or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, mandatory sinking fund requirements, or otherwise, have been deposited, and credited for the purpose in a bond retirement fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of securities to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected security holders has been filed with the subdivision or its agent for the purpose.

(BB) "Paying agent" means the one or more banks, trust companies, or other financial institutions or qualified persons, including an appropriate office or officer of the subdivision, designated as a paying agent or place of payment of debt charges on the particular securities.

(CC) "Permanent improvement" or "improvement" means any property, asset, or improvement certified by the fiscal officer, which certification is conclusive, as having an estimated life or period of usefulness of five years or more, and includes, but is not limited to, real estate, buildings, and personal property and interests in real estate, buildings, and personal property, equipment, furnishings, and site improvements, and reconstruction, rehabilitation, renovation, installation, improvement, enlargement, and extension of property, assets, or improvements so certified as having an estimated life or period of usefulness of five years or more. The acquisition of all the stock ownership of a corporation is the acquisition of a permanent improvement to the extent that the value of that stock is represented by permanent improvements. A permanent improvement for parking, highway, road, and street purposes includes resurfacing, but does not include ordinary repair.

(DD) "Person" has the same meaning as in section 1.59 of the Revised Code and also includes any federal, state, interstate, regional, or local governmental agency, any subdivision, and any combination of those persons.

(EE) "Proceedings" means the legislation, certifications, notices, orders, sale proceedings, trust agreement or indenture, mortgage, lease, lease-purchase agreement, assignment, credit enhancement facility agreements, and other agreements, instruments, and documents, as amended and supplemented, and any election proceedings, authorizing, or providing for the terms and conditions applicable to, or providing for the security or sale or award of, public obligations, and includes the provisions set forth or incorporated in those public obligations and proceedings.

(FF) "Public issuer" means any of the following that is authorized by law to issue securities or enter into public obligations:

(1) The state, including an agency, commission, officer, institution, board, authority, or other instrumentality of the state;

(2) A taxing authority, subdivision, district, or other local public or governmental entity, and any combination or consortium, or public division, district, commission, authority, department, board, officer, or institution, thereof;

(3) Any other body corporate and politic, or other public entity.

(GG) "Public obligations" means both of the following:

(1) Securities;

(2) Obligations of a public issuer to make payments under installment sale, lease, lease purchase, or similar agreements, which obligations may bear interest or interest equivalent.

(HH) "Refund" means to fund and retire outstanding securities, including advance refunding with or without payment or redemption prior to maturity.

(II) "Register" means the books kept and maintained by the registrar for registration, exchange, and transfer of registered securities.

(JJ) "Registrar" means the person responsible for keeping the register for the particular registered securities, designated by or pursuant to the proceedings.

(KK) "Securities" means bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including, unless the context does not admit, anticipatory securities, issued by an issuer to evidence its obligation to repay money borrowed, or to pay interest, by, or to pay at any future time other money obligations of, the issuer of the securities, but not including public obligations described in division (GG)(2) of this section.

(LL) "Self-supporting securities" means securities or portions of securities issued for the purpose of paying costs of permanent improvements to the extent that receipts of the subdivision, other than the proceeds of taxes levied by that subdivision, derived from or with respect to the improvements or the operation of the improvements being financed, or the enterprise, system, project, or category of improvements of which the improvements being financed are part, are estimated by the fiscal officer to be sufficient to pay the current expenses of that operation or of those improvements or enterprise, system, project, or categories of improvements and the debt charges payable from those receipts on securities issued for the purpose. Until such time as the improvements or increases in rates and charges have been in operation or effect for a period of at least six months, the receipts therefrom, for purposes of this definition, shall be those estimated by the fiscal officer, except that those receipts may include, without limitation, payments made and to be made to the subdivision under leases or agreements in effect at the time the estimate is made. In the case of an operation, improvements, or enterprise, system, project, or category of improvements without at least a six-month history of receipts, the estimate of receipts by the fiscal officer, other than those to be derived under leases and agreements then in effect, shall be confirmed by the taxing authority.

(MM) "Subdivision" means any of the following:

(1) A county, including a county that has adopted a charter under Article X, Ohio Constitution;

(2) A municipal corporation, including a municipal corporation that has adopted a charter under Article XVIII, Ohio Constitution;

(3) A school district;

(4) A regional water and sewer district organized under Chapter 6119. of the Revised Code;

(5) A joint township hospital district organized under section 513.07 of the Revised Code;

(6) A joint ambulance district organized under section 505.71 of the Revised Code;

(7) A joint recreation district organized under division (C) of section 755.14 of the Revised Code;

(8) A detention facility district organized under section 2152.41, a district organized under section 2151.65, or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code;

(9) A township police district organized under section 505.48 of the Revised Code;

(10) A township;

(11) A joint fire district organized under section 505.371 of the Revised Code;

(12) A county library district created under section 3375.19 or a regional library district created under section 3375.28 of the Revised Code;

(13) A joint solid waste management district organized under section 343.01 or 343.012 of the Revised Code;

(14) A joint emergency medical services district organized under section 307.052 of the Revised Code;

(15) A fire and ambulance district organized under section 505.375 of the Revised Code;

(16) A fire district organized under division (C) of section 505.37 of the Revised Code;

(17) A joint police district organized under section 505.482 of the Revised Code;

(18) A lake facilities authority created under Chapter 353. of the Revised Code;

(19) A regional transportation improvement project created under Chapter 5595. of the Revised Code;

(20) Any other political subdivision or taxing district or other local public body or agency authorized by this chapter or other laws to issue Chapter 133. securities.

(NN) "Taxing authority" means in the case of the following subdivisions:

(1) A county, a county library district, or a regional library district, the board or boards of county commissioners, or other legislative authority of a county that has adopted a charter under Article X, Ohio Constitution, but with respect to such a library district acting solely as agent for the board of trustees of that district;

(2) A municipal corporation, the legislative authority;

(3) A school district, the board of education;

(4) A regional water and sewer district, a joint ambulance district, a joint recreation district, a fire and ambulance district, or a joint fire district, the board of trustees of the district;

(5) A joint township hospital district, the joint township hospital board;

(6) A detention facility district or a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, or a joint emergency medical services district, the joint board of county commissioners;

(7) A township, a fire district organized under division (C) of section 505.37 of the Revised Code, or a township police district, the board of township trustees;

(8) A joint solid waste management district organized under section 343.01 or 343.012 of the Revised Code, the board of directors of the district;

(9) A subdivision described in division (MM)~~(19)~~ (20) of this section, the legislative or governing body or official;

(10) A joint police district, the joint police district board;

(11) A lake facilities authority, the board of directors;

(12) A regional transportation improvement project, the governing board.

(OO) "Tax limitation" means the "ten-mill limitation" as defined in section 5705.02 of the Revised Code without diminution by reason of section 5705.313 of the Revised Code or otherwise, or, in the case of a municipal corporation or county with a different charter limitation on property taxes levied to pay debt charges on unvoted securities, that charter limitation. Those limitations shall be respectively referred to as the "ten-mill limitation" and the "charter tax limitation."

(PP) "Tax valuation" means the aggregate of the valuations of property subject to ad valorem property taxation by the subdivision on the real property, personal property, and public utility property tax lists and duplicates most recently certified for collection, and shall be calculated without deductions of the valuations of otherwise taxable property exempt in whole or in part from taxation by reason of exemptions of certain amounts of taxable value under division (C) of section 5709.01, tax reductions under section 323.152 of the Revised Code, or similar laws now or in the future in effect.

For purposes of section 133.06 of the Revised Code, "tax valuation" shall not include the valuation of tangible personal property used in business, telephone or telegraph property, interexchange telecommunications company property, or personal property owned or leased by a railroad company and used in railroad operations listed under or described in section 5711.22, division (B) or (F) of section 5727.111, or section 5727.12 of the Revised Code.

(QQ) "Year" means the calendar year.

(RR) "Administrative agent," "agent," "commercial paper," "floating rate interest structure," "indexing agent," "interest rate hedge," "interest rate period," "put arrangement," and "remarketing agent" have the same meanings as in section 9.98 of the Revised Code.

(SS) "Sales tax supported" means obligations to the payment of debt charges on which an additional sales tax or additional sales taxes have been pledged by the taxing authority of a county pursuant to section 133.081 of the Revised Code.

(TT) "Tourism development district revenue supported" means obligations to the payment of debt charges on which tourism development district revenue has been pledged by the taxing authority of a municipal corporation or township under section 133.083 of the Revised Code.

Sec. 133.06. (A) A school district shall not incur, without a vote of the electors, net indebtedness that exceeds an amount equal to one-tenth of one per cent of its tax valuation, except as provided in divisions (G) and (H) of this section and in division (D) of section 3313.372 of the Revised Code, or as prescribed in section 3318.052 or 3318.44 of the Revised Code, or as provided in division (J) of this section.

(B) Except as provided in divisions (E), (F), and (I) of this section, a school district shall not incur net indebtedness that exceeds an amount equal to nine per cent of its tax valuation.

(C) A school district shall not submit to a vote of the electors the question of the issuance of securities in an amount that will make the district's net indebtedness after the issuance of the securities exceed an amount equal to four per cent of its tax valuation, unless the superintendent of public instruction, acting under policies adopted by the state board of education, and the tax commissioner, acting under written policies of the commissioner, consent to the submission. A request for the consents shall be made at least one hundred twenty days prior to the election at which the question is to be submitted.

The superintendent of public instruction shall certify to the district the superintendent's and

the tax commissioner's decisions within thirty days after receipt of the request for consents.

If the electors do not approve the issuance of securities at the election for which the superintendent of public instruction and tax commissioner consented to the submission of the question, the school district may submit the same question to the electors on the date that the next special election may be held under section 3501.01 of the Revised Code without submitting a new request for consent. If the school district seeks to submit the same question at any other subsequent election, the district shall first submit a new request for consent in accordance with this division.

(D) In calculating the net indebtedness of a school district, none of the following shall be considered:

(1) Securities issued to acquire school buses and other equipment used in transporting pupils or issued pursuant to division (D) of section 133.10 of the Revised Code;

(2) Securities issued under division (F) of this section~~, under section 133.301 of the Revised Code,~~ and, to the extent in excess of the limitation stated in division (B) of this section, under division (E) of this section;

(3) Indebtedness resulting from the dissolution of a joint vocational school district under section 3311.217 of the Revised Code, evidenced by outstanding securities of that joint vocational school district;

(4) Loans, evidenced by any securities, received under sections 3313.483, 3317.0210, and 3317.0211 of the Revised Code;

(5) Debt incurred under section 3313.374 of the Revised Code;

(6) Debt incurred pursuant to division (B)(5) of section 3313.37 of the Revised Code to acquire computers and related hardware;

(7) Debt incurred under section 3318.042 of the Revised Code;

(8) Debt incurred under section 5705.2112 or 5705.2113 of the Revised Code by the fiscal board of a qualifying partnership of which the school district is a participating school district.

(E) A school district may become a special needs district as to certain securities as provided in division (E) of this section.

(1) A board of education, by resolution, may declare its school district to be a special needs district by determining both of the following:

(a) The student population is not being adequately serviced by the existing permanent improvements of the district.

(b) The district cannot obtain sufficient funds by the issuance of securities within the limitation of division (B) of this section to provide additional or improved needed permanent improvements in time to meet the needs.

(2) The board of education shall certify a copy of that resolution to the superintendent of public instruction with a statistical report showing all of the following:

(a) The history of and a projection of the growth of the tax valuation;

(b) The projected needs;

(c) The estimated cost of permanent improvements proposed to meet such projected needs.

(3) The superintendent of public instruction shall certify the district as an approved special needs district if the superintendent finds both of the following:

(a) The district does not have available sufficient additional funds from state or federal

sources to meet the projected needs.

(b) The projection of the potential average growth of tax valuation during the next five years, according to the information certified to the superintendent and any other information the superintendent obtains, indicates a likelihood of potential average growth of tax valuation of the district during the next five years of an average of not less than one and one-half per cent per year. The findings and certification of the superintendent shall be conclusive.

(4) An approved special needs district may incur net indebtedness by the issuance of securities in accordance with the provisions of this chapter in an amount that does not exceed an amount equal to the greater of the following:

(a) Twelve per cent of the sum of its tax valuation plus an amount that is the product of multiplying that tax valuation by the percentage by which the tax valuation has increased over the tax valuation on the first day of the sixtieth month preceding the month in which its board determines to submit to the electors the question of issuing the proposed securities;

(b) Twelve per cent of the sum of its tax valuation plus an amount that is the product of multiplying that tax valuation by the percentage, determined by the superintendent of public instruction, by which that tax valuation is projected to increase during the next ten years.

(F) A school district may issue securities for emergency purposes, in a principal amount that does not exceed an amount equal to three per cent of its tax valuation, as provided in this division.

(1) A board of education, by resolution, may declare an emergency if it determines both of the following:

(a) School buildings or other necessary school facilities in the district have been wholly or partially destroyed, or condemned by a constituted public authority, or that such buildings or facilities are partially constructed, or so constructed or planned as to require additions and improvements to them before the buildings or facilities are usable for their intended purpose, or that corrections to permanent improvements are necessary to remove or prevent health or safety hazards.

(b) Existing fiscal and net indebtedness limitations make adequate replacement, additions, or improvements impossible.

(2) Upon the declaration of an emergency, the board of education may, by resolution, submit to the electors of the district pursuant to section 133.18 of the Revised Code the question of issuing securities for the purpose of paying the cost, in excess of any insurance or condemnation proceeds received by the district, of permanent improvements to respond to the emergency need.

(3) The procedures for the election shall be as provided in section 133.18 of the Revised Code, except that:

(a) The form of the ballot shall describe the emergency existing, refer to this division as the authority under which the emergency is declared, and state that the amount of the proposed securities exceeds the limitations prescribed by division (B) of this section;

(b) The resolution required by division (B) of section 133.18 of the Revised Code shall be certified to the county auditor and the board of elections at least one hundred days prior to the election;

(c) The county auditor shall advise and, not later than ninety-five days before the election, confirm that advice by certification to, the board of education of the information required by division (C) of section 133.18 of the Revised Code;

(d) The board of education shall then certify its resolution and the information required by division (D) of section 133.18 of the Revised Code to the board of elections not less than ninety days prior to the election.

(4) Notwithstanding division (B) of section 133.21 of the Revised Code, the first principal payment of securities issued under this division may be set at any date not later than sixty months after the earliest possible principal payment otherwise provided for in that division.

(G)(1) The board of education may contract with an architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures for an analysis and recommendations pertaining to installations, modifications of installations, or remodeling that would significantly reduce energy consumption in buildings owned by the district. The report shall include estimates of all costs of such installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, measurement and verification of energy savings, and debt service, forgone residual value of materials or equipment replaced by the energy conservation measure, as defined by the Ohio facilities construction commission, a baseline analysis of actual energy consumption data for the preceding three years with the utility baseline based on only the actual energy consumption data for the preceding twelve months, and estimates of the amounts by which energy consumption and resultant operational and maintenance costs, as defined by the commission, would be reduced.

If the board finds after receiving the report that the amount of money the district would spend on such installations, modifications, or remodeling is not likely to exceed the amount of money it would save in energy and resultant operational and maintenance costs over the ensuing fifteen years, the board may submit to the commission a copy of its findings and a request for approval to incur indebtedness to finance the making or modification of installations or the remodeling of buildings for the purpose of significantly reducing energy consumption.

The facilities construction commission, in consultation with the auditor of state, may deny a request under division (G)(1) of this section by the board of education of any school district that is in a state of fiscal watch pursuant to division (A) of section 3316.03 of the Revised Code, if it determines that the expenditure of funds is not in the best interest of the school district.

No district board of education of a school district that is in a state of fiscal emergency pursuant to division (B) of section 3316.03 of the Revised Code shall submit a request without submitting evidence that the installations, modifications, or remodeling have been approved by the district's financial planning and supervision commission established under section 3316.05 of the Revised Code.

No board of education of a school district for which an academic distress commission has been established under section 3302.10 of the Revised Code shall submit a request without first receiving approval to incur indebtedness from the district's academic distress commission established under that section, for so long as such commission continues to be required for the district.

(2) The board of education may contract with a person experienced in the implementation of student transportation to produce a report that includes an analysis of and recommendations for the use of alternative fuel vehicles by school districts. The report shall include cost estimates detailing the return on investment over the life of the alternative fuel vehicles and environmental impact of alternative fuel vehicles. The report also shall include estimates of all costs associated with

alternative fuel transportation, including facility modifications and vehicle purchase costs or conversion costs.

If the board finds after receiving the report that the amount of money the district would spend on purchasing alternative fuel vehicles or vehicle conversion is not likely to exceed the amount of money it would save in fuel and resultant operational and maintenance costs over the ensuing five years, the board may submit to the commission a copy of its findings and a request for approval to incur indebtedness to finance the purchase of new alternative fuel vehicles or vehicle conversions for the purpose of reducing fuel costs.

The facilities construction commission, in consultation with the auditor of state, may deny a request under division (G)(2) of this section by the board of education of any school district that is in a state of fiscal watch pursuant to division (A) of section 3316.03 of the Revised Code, if it determines that the expenditure of funds is not in the best interest of the school district.

No district board of education of a school district that is in a state of fiscal emergency pursuant to division (B) of section 3316.03 of the Revised Code shall submit a request without submitting evidence that the purchase or conversion of alternative fuel vehicles has been approved by the district's financial planning and supervision commission established under section 3316.05 of the Revised Code.

No board of education of a school district for which an academic distress commission has been established under section 3302.10 of the Revised Code shall submit a request without first receiving approval to incur indebtedness from the district's academic distress commission established under that section, for so long as such commission continues to be required for the district.

(3) The facilities construction commission shall approve the board's request provided that the following conditions are satisfied:

(a) The commission determines that the board's findings are reasonable.

(b) The request for approval is complete.

(c) If the request was submitted under division (G)(1) of this section, the installations, modifications, or remodeling are consistent with any project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities under sections 3318.01 to 3318.20 or sections 3318.40 to 3318.45 of the Revised Code.

Upon receipt of the commission's approval, the district may issue securities without a vote of the electors in a principal amount not to exceed nine-tenths of one per cent of its tax valuation for the purpose specified in division (G)(1) or (2) of this section, but the total net indebtedness of the district without a vote of the electors incurred under this and all other sections of the Revised Code, except section 3318.052 of the Revised Code, shall not exceed one per cent of the district's tax valuation.

(4)(a) So long as any securities issued under division (G)(1) of this section remain outstanding, the board of education shall monitor the energy consumption and resultant operational and maintenance costs of buildings in which installations or modifications have been made or remodeling has been done pursuant to that division. Except as provided in division (G)(4)(b) of this section, the board shall maintain and annually update a report in a form and manner prescribed by the facilities construction commission documenting the reductions in energy consumption and resultant operational and maintenance cost savings attributable to such installations, modifications, or remodeling. The resultant operational and maintenance cost savings shall be certified by the school

district treasurer. The report shall be submitted annually to the commission.

(b) If the facilities construction commission verifies that the certified annual reports submitted to the commission by a board of education under division (G)(4)(a) of this section fulfill the guarantee required under division (B) of section 3313.372 of the Revised Code for three consecutive years, the board of education shall no longer be subject to the annual reporting requirements of division (G)(4)(a) of this section.

(5) So long as any securities issued under division (G)(2) of this section remain outstanding, the board of education shall monitor the purchase of new alternative fuel vehicles or vehicle conversions pursuant to that division. The board shall maintain and annually update a report in a form and manner prescribed by the facilities construction commission documenting the purchase of new alternative fuel vehicles or vehicle conversions, the associated environmental impact, and return on investment. The resultant fuel and operational and maintenance cost savings shall be certified by the school district treasurer. The report shall be submitted annually to the commission.

(H) With the consent of the superintendent of public instruction, a school district may incur without a vote of the electors net indebtedness that exceeds the amounts stated in divisions (A) and (G) of this section for the purpose of paying costs of permanent improvements, if and to the extent that both of the following conditions are satisfied:

(1) The fiscal officer of the school district estimates that receipts of the school district from payments made under or pursuant to agreements entered into pursuant to section 725.02, 1728.10, 3735.671, 5709.081, 5709.082, 5709.40, 5709.41, 5709.45, 5709.57, 5709.62, 5709.63, 5709.632, 5709.73, 5709.78, or 5709.82 of the Revised Code, or distributions under division (C) of section 5709.43 or division (B) of section 5709.47 of the Revised Code, or any combination thereof, are, after accounting for any appropriate coverage requirements, sufficient in time and amount, and are committed by the proceedings, to pay the debt charges on the securities issued to evidence that indebtedness and payable from those receipts, and the taxing authority of the district confirms the fiscal officer's estimate, which confirmation is approved by the superintendent of public instruction;

(2) The fiscal officer of the school district certifies, and the taxing authority of the district confirms, that the district, at the time of the certification and confirmation, reasonably expects to have sufficient revenue available for the purpose of operating such permanent improvements for their intended purpose upon acquisition or completion thereof, and the superintendent of public instruction approves the taxing authority's confirmation.

The maximum maturity of securities issued under division (H) of this section shall be the lesser of twenty years or the maximum maturity calculated under section 133.20 of the Revised Code.

(I) A school district may incur net indebtedness by the issuance of securities in accordance with the provisions of this chapter in excess of the limit specified in division (B) or (C) of this section when necessary to raise the school district portion of the basic project cost and any additional funds necessary to participate in a project under Chapter 3318. of the Revised Code, including the cost of items designated by the facilities construction commission as required locally funded initiatives, the cost of other locally funded initiatives in an amount that does not exceed fifty per cent of the district's portion of the basic project cost, and the cost for site acquisition. The commission shall notify the superintendent of public instruction whenever a school district will exceed either limit pursuant to

this division.

(J) A school district whose portion of the basic project cost of its classroom facilities project under sections 3318.01 to 3318.20 of the Revised Code is greater than or equal to one hundred million dollars may incur without a vote of the electors net indebtedness in an amount up to two per cent of its tax valuation through the issuance of general obligation securities in order to generate all or part of the amount of its portion of the basic project cost if the controlling board has approved the facilities construction commission's conditional approval of the project under section 3318.04 of the Revised Code. The school district board and the Ohio facilities construction commission shall include the dedication of the proceeds of such securities in the agreement entered into under section 3318.08 of the Revised Code. No state moneys shall be released for a project to which this section applies until the proceeds of any bonds issued under this section that are dedicated for the payment of the school district portion of the project are first deposited into the school district's project construction fund.

Sec. 133.07. (A) A county shall not incur, without a vote of the electors, either of the following:

(1) Net indebtedness for all purposes that exceeds an amount equal to one per cent of its tax valuation;

(2) Net indebtedness for the purpose of paying the county's share of the cost of the construction, improvement, maintenance, or repair of state highways that exceeds an amount equal to one-half of one per cent of its tax valuation.

(B) A county shall not incur total net indebtedness that exceeds an amount equal to one of the following limitations that applies to the county:

(1) A county with a valuation not exceeding one hundred million dollars, three per cent of that tax valuation;

(2) A county with a tax valuation exceeding one hundred million dollars but not exceeding three hundred million dollars, three million dollars plus one and one-half per cent of that tax valuation in excess of one hundred million dollars;

(3) A county with a tax valuation exceeding three hundred million dollars, six million dollars plus two and one-half per cent of that tax valuation in excess of three hundred million dollars.

(C) In calculating the net indebtedness of a county, none of the following securities shall be considered:

(1) Securities described in section 307.201 of the Revised Code;

(2) Self-supporting securities issued for any purposes, including, but not limited to, any of the following general purposes:

(a) Water systems or facilities;

(b) Sanitary sewerage systems or facilities, or surface and storm water drainage and sewerage systems or facilities, or a combination of those systems or facilities;

(c) County or joint county scrap tire collection, storage, monocell, monofill, or recovery facilities, or any combination of those facilities;

(d) Off-street parking lots, facilities, or buildings, or on-street parking facilities, or any combination of off-street and on-street parking facilities;

(e) Facilities for the care or treatment of the sick or infirm, and for housing the persons

providing that care or treatment and their families;

(f) Recreational, sports, convention, auditorium, museum, trade show, and other public attraction facilities;

(g) Facilities for natural resources exploration, development, recovery, use, and sale;

(h) Correctional and detention facilities and related rehabilitation facilities.

(3) Securities issued for the purpose of purchasing, constructing, improving, or extending water or sanitary or surface and storm water sewerage systems or facilities, or a combination of those systems or facilities, to the extent that an agreement entered into with another subdivision requires the other subdivision to pay to the county amounts equivalent to debt charges on the securities;

(4) Voted general obligation securities issued for the purpose of permanent improvements for sanitary sewerage or water systems or facilities to the extent that the total principal amount of voted securities outstanding for the purpose does not exceed an amount equal to two per cent of the county's tax valuation;

(5) Securities issued for permanent improvements to house agencies, departments, boards, or commissions of the county or of any municipal corporation located, in whole or in part, in the county, to the extent that the revenues, other than revenues from unvoted county property taxes, derived from leases or other agreements between the county and those agencies, departments, boards, commissions, or municipal corporations relating to the use of the permanent improvements are sufficient to cover the cost of all operating expenses of the permanent improvements paid by the county and debt charges on the securities;

(6) Securities issued pursuant to section 133.08 of the Revised Code;

(7) Securities issued for the purpose of acquiring or constructing roads, highways, bridges, or viaducts, for the purpose of acquiring or making other highway permanent improvements, or for the purpose of procuring and maintaining computer systems for the office of the clerk of any county-operated municipal court, for the office of the clerk of the court of common pleas, or for the office of the clerk of the probate, juvenile, or domestic relations division of the court of common pleas to the extent that the legislation authorizing the issuance of the securities includes a covenant to appropriate from moneys distributed to the county pursuant to division (B) of section 2101.162, 2151.541, 2153.081, 2301.031, or 2303.201 or Chapter 4501., 4503., 4504., or 5735. of the Revised Code a sufficient amount to cover debt charges on and financing costs relating to the securities as they become due;

(8) Securities issued for the purpose of acquiring, constructing, improving, and equipping a county, multicounty, or multicounty-municipal jail, workhouse, juvenile detention facility, or correctional facility;

(9) Securities issued for the acquisition, construction, equipping, or repair of any permanent improvement or any class or group of permanent improvements enumerated in a resolution adopted pursuant to division (D) of section 5739.026, or under division ~~(A)(10)~~ (J) of section 5739.09, of the Revised Code to the extent that the legislation authorizing the issuance of the securities includes a covenant to appropriate from moneys received from the taxes authorized under section 5739.023 and division (A)(5) of section 5739.026, or under division ~~(A)(10)~~ (J) of section 5739.09~~,~~ of the Revised Code, respectively, an amount sufficient to pay debt charges on the securities and those moneys shall be pledged for that purpose;

(10) Securities issued for county or joint county solid waste or hazardous waste collection, transfer, or disposal facilities, or resource recovery and solid or hazardous waste recycling facilities, or any combination of those facilities;

(11) Securities issued for the acquisition, construction, and equipping of a port authority educational and cultural facility under section 307.671 of the Revised Code;

(12) Securities issued for the acquisition, construction, equipping, and improving of a municipal educational and cultural facility under division (B)(1) of section 307.672 of the Revised Code;

(13) Securities issued for energy conservation measures under section 307.041 of the Revised Code;

(14) Securities issued for the acquisition, construction, equipping, improving, or repair of a sports facility, including obligations issued to pay costs of a sports facility under section 307.673 of the Revised Code;

(15) Securities issued under section 755.17 of the Revised Code if the legislation authorizing issuance of the securities includes a covenant to appropriate from revenue received from a tax authorized under division (A)(5) of section 5739.026 and section 5741.023 of the Revised Code an amount sufficient to pay debt charges on the securities, and the board of county commissioners pledges that revenue for that purpose, pursuant to section 755.171 of the Revised Code;

(16) Sales tax supported bonds issued pursuant to section 133.081 of the Revised Code for the purpose of acquiring, constructing, improving, or equipping any permanent improvement to the extent that the legislation authorizing the issuance of the sales tax supported bonds pledges county sales taxes to the payment of debt charges on the sales tax supported bonds and contains a covenant to appropriate from county sales taxes a sufficient amount to cover debt charges or the financing costs related to the sales tax supported bonds as they become due;

(17) Bonds or notes issued under section 133.60 of the Revised Code if the legislation authorizing issuance of the bonds or notes includes a covenant to appropriate from revenue received from a tax authorized under division (A)(9) of section 5739.026 and section 5741.023 of the Revised Code an amount sufficient to pay the debt charges on the bonds or notes, and the board of county commissioners pledges that revenue for that purpose;

(18) Securities issued under section 3707.55 of the Revised Code for the acquisition of real property by a general health district;

(19) Securities issued under division (A)(3) of section 3313.37 of the Revised Code for the acquisition of real and personal property by an educational service center;

(20) Securities issued for the purpose of paying the costs of acquiring, constructing, reconstructing, renovating, rehabilitating, expanding, adding to, equipping, furnishing, or otherwise improving an arena, convention center, or a combination of an arena and convention center under section 307.695 of the Revised Code;

(21) Securities issued for the purpose of paying project costs under section 307.678 of the Revised Code;

(22) Securities issued for the purpose of paying project costs under section 307.679 of the Revised Code.

(D) In calculating the net indebtedness of a county, no obligation incurred under division (F)

of section 339.06 of the Revised Code shall be considered.

Sec. 133.18. (A) The taxing authority of a subdivision may by legislation submit to the electors of the subdivision the question of issuing any general obligation bonds, for one purpose, that the subdivision has power or authority to issue.

(B) When the taxing authority of a subdivision desires or is required by law to submit the question of a bond issue to the electors, it shall pass legislation that does all of the following:

(1) Declares the necessity and purpose of the bond issue;

(2) States the date of the authorized election at which the question shall be submitted to the electors;

(3) States the amount, approximate date, estimated net average rate of interest, and maximum number of years over which the principal of the bonds may be paid;

(4) Declares the necessity of levying a tax outside the tax limitation to pay the debt charges on the bonds and any anticipatory securities.

The estimated net average interest rate shall be determined by the taxing authority based on, among other factors, then existing market conditions, and may reflect adjustments for any anticipated direct payments expected to be received by the taxing authority from the government of the United States relating to the bonds and the effect of any federal tax credits anticipated to be available to owners of all or a portion of the bonds. The estimated net average rate of interest, and any statutory or charter limit on interest rates that may then be in effect and that is subsequently amended, shall not be a limitation on the actual interest rate or rates on the securities when issued.

~~(C)(1)~~ (C) The taxing authority shall certify a copy of the legislation passed under division (B) of this section to the county auditor. The county auditor shall promptly calculate and advise and, not later than ninety days before the election, confirm that advice by certification to, the taxing authority the estimated average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, that the county auditor estimates to be required throughout the stated maturity of the bonds to pay the debt charges on the bonds. In calculating the estimated average annual property tax levy for this purpose, the county auditor shall assume that the bonds are issued in one series bearing interest and maturing in substantially equal principal amounts in each year over the maximum number of years over which the principal of the bonds may be paid as stated in that legislation, and that the amount of the tax valuation of the subdivision for the current year remains the same throughout the maturity of the bonds~~, except as otherwise provided in division (C)(2) of this section~~. If the tax valuation for the current year is not determined, the county auditor shall base the calculation on the estimated amount of the tax valuation submitted by the county auditor to the county budget commission. If the subdivision is located in more than one county, the county auditor shall obtain the assistance of the county auditors of the other counties, and those county auditors shall provide assistance, in establishing the tax valuation of the subdivision for purposes of certifying the estimated average annual property tax levy.

~~(2) When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.~~

(D) After receiving the county auditor's advice under division (C) of this section, the taxing authority by legislation may determine to proceed with submitting the question of the issue of securities, and shall, not later than the ninetieth day before the day of the election, file the following with the board of elections:

(1) Copies of the legislation provided for in divisions (B) and (D) of this section;

(2) The amount of the estimated average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, as estimated and certified to the taxing authority by the county auditor.

(E)(1) The board of elections shall prepare the ballots and make other necessary arrangements for the submission of the question to the electors of the subdivision. If the subdivision is located in more than one county, the board shall inform the boards of elections of the other counties of the filings with it, and those other boards shall if appropriate make the other necessary arrangements for the election in their counties. The election shall be conducted, canvassed, and certified in the manner provided in Title XXXV of the Revised Code.

(2) The election shall be held at the regular places for voting in the subdivision. If the electors of only a part of a precinct are qualified to vote at the election the board of elections may assign the electors in that part to an adjoining precinct, including an adjoining precinct in another county if the board of elections of the other county consents to and approves the assignment. Each elector so assigned shall be notified of that fact prior to the election by notice mailed by the board of elections, in such manner as it determines, prior to the election.

(3) The board of elections shall publish a notice of the election once in a newspaper of general circulation in the subdivision, no later than ten days prior to the election. The notice shall state all of the following:

(a) The principal amount of the proposed bond issue;

(b) The stated purpose for which the bonds are to be issued;

(c) The maximum number of years over which the principal of the bonds may be paid;

(d) The estimated additional average annual property tax levy, expressed in cents or dollars and cents for each one hundred dollars of tax valuation and in mills for each one dollar of tax valuation, to be levied outside the tax limitation, as estimated and certified to the taxing authority by the county auditor;

(e) The first calendar year in which the tax is expected to be due.

(F)(1) The form of the ballot to be used at the election shall be substantially either of the following, as applicable:

(a) "Shall bonds be issued by the _____ (name of subdivision) for the purpose of _____ (purpose of the bond issue) in the principal amount of _____ (principal amount of the bond issue), to be repaid annually over a maximum period of _____ (the maximum number of years over which the principal of the bonds may be paid) years, and an annual levy of property taxes be made outside the _____ (as applicable, "ten-mill" or "___charter tax") limitation, estimated by the county auditor to average over the repayment period of the bond issue _____ (number of mills) mills for each one dollar of tax valuation, which amounts to _____ (rate expressed in cents or dollars and cents, such as "36 cents" or "$1.41") for each one hundred dollars of tax valuation, commencing in _____ (first year the tax will be levied), first

due in calendar year _____ (first calendar year in which the tax shall be due), to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds?

For the bond issue

"

Against the bond issue

(b) In the case of an election held pursuant to legislation adopted under section 3375.43 or 3375.431 of the Revised Code:

"Shall bonds be issued for _____ (name of library) for the purpose of _____ (purpose of the bond issue), in the principal amount of _____ (amount of the bond issue) by _____ (the name of the subdivision that is to issue the bonds and levy the tax) as the issuer of the bonds, to be repaid annually over a maximum period of _____ (the maximum number of years over which the principal of the bonds may be paid) years, and an annual levy of property taxes be made outside the ten-mill limitation, estimated by the county auditor to average over the repayment period of the bond issue _____ (number of mills) mills for each one dollar of tax valuation, which amounts to _____ (rate expressed in cents or dollars and cents, such as "36 cents" or "$1.41") for each one hundred dollars of tax valuation, commencing in _____ (first year the tax will be levied), first due in calendar year _____ (first calendar year in which the tax shall be due), to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds?

For the bond issue

"

Against the bond issue

(2) The purpose for which the bonds are to be issued shall be printed in the space indicated, in boldface type.

(G) The board of elections shall promptly certify the results of the election to the tax commissioner, the county auditor of each county in which any part of the subdivision is located, and the fiscal officer of the subdivision. The election, including the proceedings for and result of the election, is incontestable other than in a contest filed under section 3515.09 of the Revised Code in which the plaintiff prevails.

(H) If a majority of the electors voting upon the question vote for it, the taxing authority of the subdivision may proceed under sections 133.21 to 133.33 of the Revised Code with the issuance of the securities and with the levy and collection of a property tax outside the tax limitation during

the period the securities are outstanding sufficient in amount to pay the debt charges on the securities, including debt charges on any anticipatory securities required to be paid from that tax. If legislation passed under section 133.22 or 133.23 of the Revised Code authorizing those securities is filed with the county auditor on or before the last day of November, the amount of the voted property tax levy required to pay debt charges or estimated debt charges on the securities payable in the following year shall if requested by the taxing authority be included in the taxes levied for collection in the following year under section 319.30 of the Revised Code.

(I)(1) If, before any securities authorized at an election under this section are issued, the net indebtedness of the subdivision exceeds that applicable to that subdivision or those securities, then and so long as that is the case none of the securities may be issued.

(2) No securities authorized at an election under this section may be initially issued after the first day of the sixth January following the election, but this period of limitation shall not run for any time during which any part of the permanent improvement for which the securities have been authorized, or the issuing or validity of any part of the securities issued or to be issued, or the related proceedings, is involved or questioned before a court or a commission or other tribunal, administrative agency, or board.

(3) Securities representing a portion of the amount authorized at an election that are issued within the applicable limitation on net indebtedness are valid and in no manner affected by the fact that the balance of the securities authorized cannot be issued by reason of the net indebtedness limitation or lapse of time.

(4) Nothing in this division (I) shall be interpreted or applied to prevent the issuance of securities in an amount to fund or refund anticipatory securities lawfully issued.

(5) The limitations of divisions (I)(1) and (2) of this section do not apply to any securities authorized at an election under this section if at least ten per cent of the principal amount of the securities, including anticipatory securities, authorized has theretofore been issued, or if the securities are to be issued for the purpose of participating in any federally or state-assisted program.

(6) The certificate of the fiscal officer of the subdivision is conclusive proof of the facts referred to in this division.

Sec. 135.142. (A) In addition to the investments authorized by section 135.14 of the Revised Code, any board of education, by a two-thirds vote of its members, may authorize the treasurer of the board of education to invest up to forty per cent of the interim moneys of the board, available for investment at any one time, in either of the following:

(1) Commercial paper notes issued by any entity that is defined in division (D) of section 1705.01 of the Revised Code and has assets exceeding five hundred million dollars, and to which notes all of the following apply:

(a) The notes are rated at the time of purchase in the highest classification established by at least two nationally recognized standard rating services.

(b) The aggregate value of the notes does not exceed ten per cent of the aggregate value of the outstanding commercial paper of the issuing corporation.

(c) The notes mature no later than two hundred seventy days after purchase.

(d) The investment in commercial paper notes of a single issuer shall not exceed in the aggregate five per cent of interim moneys of the board available for investment at the time of

purchase.

(2) Bankers' acceptances of banks that are insured by the federal deposit insurance corporation and that mature no later than one hundred eighty days after purchase.

(B) No investment authorized pursuant to division (A) of this section shall be made, whether or not authorized by a board of education, unless the treasurer of the board of education has completed additional training for making the types of investments authorized pursuant to division (A) of this section. The type and amount of such training shall be approved and may be conducted by or provided under the supervision of the treasurer of state.

(C) The treasurer of the board of education shall prepare annually and submit to the board of education, the superintendent of public instruction, and the auditor of state, on or before the thirty-first day of August, a report listing each investment made pursuant to division (A) of this section during the preceding fiscal year, income earned from such investments, fees and commissions paid pursuant to division (D) of this section, and any other information required by the board, the superintendent, and the auditor of state.

(D) A board of education may make appropriations and expenditures for fees and commissions in connection with investments made pursuant to division (A) of this section.

(E)(1) In addition to the investments authorized by section 135.14 of the Revised Code and division (A) of this section, any board of education that is a party to an agreement with the treasurer of state pursuant to division (G) of section 135.143 of the Revised Code and that has outstanding obligations issued under authority of section 133.10 ~~or 133.301~~ of the Revised Code may authorize the treasurer of the board of education to invest interim moneys of the board in debt interests rated in either of the two highest rating classifications by at least two nationally recognized standard rating services and issued by entities that are defined in division (D) of section 1705.01 of the Revised Code. The debt interests purchased under authority of division (E) of this section shall mature not later than the latest maturity date of the outstanding obligations issued under authority of section 133.10 or 133.301 of the Revised Code.

(2) If any of the debt interests acquired under division (E)(1) of this section ceases to be rated as there required, its issuer shall notify the treasurer of state of this fact within twenty-four hours. At any time thereafter the treasurer of state may require collateralization at the rate of one hundred two per cent of any remaining obligation of the entity, with securities authorized for investment under section 135.143 of the Revised Code. The collateral shall be delivered to and held by a custodian acceptable to the treasurer of state, marked to market daily, and any default to be cured within twelve hours. Unlimited substitution shall be allowed of comparable securities.

Sec. 305.31. The procedure for submitting to a referendum a resolution adopted by a board of county commissioners under division (H) of section 307.695 of the Revised Code that is not submitted to the electors of the county for their approval or disapproval; any resolution adopted by a board of county commissioners pursuant to division (D)(1) of section 307.697, section 322.02, or 322.06, sections 940.31 and 940.33, division (B)(1) of section 4301.421, section 4504.02, 5739.021, or 5739.026, division ~~(A)(6)~~(F), ~~(A)(10)~~(J), or ~~(M)~~ (U) of section 5739.09, section 5741.021 or 5741.023, or division (C)(1) of section 5743.024 of the Revised Code; or a rule adopted pursuant to section 307.79 of the Revised Code shall be as prescribed by this section.

Except as otherwise provided in this paragraph, when a petition, signed by ten per cent of the

number of electors who voted for governor at the most recent general election for the office of governor in the county, is filed with the county auditor within thirty days after the date the resolution is passed or rule is adopted by the board of county commissioners, or is filed within forty-five days after the resolution is passed, in the case of a resolution adopted pursuant to section 5739.021 of the Revised Code that is passed within one year after a resolution adopted pursuant to that section has been rejected or repealed by the electors, requesting that the resolution be submitted to the electors of the county for their approval or rejection, the county auditor shall, after ten days following the filing of the petition, and not later than four p.m. of the ninetieth day before the day of election, transmit a certified copy of the text of the resolution or rule to the board of elections. In the case of a petition requesting that a resolution adopted under division (D)(1) of section 307.697, division (B)(1) of section 4301.421, or division (C)(1) of section 5743.024 of the Revised Code be submitted to electors for their approval or rejection, the petition shall be signed by seven per cent of the number of electors who voted for governor at the most recent election for the office of governor in the county. The county auditor shall transmit the petition to the board together with the certified copy of the resolution or rule. The board shall examine all signatures on the petition to determine the number of electors of the county who signed the petition. The board shall return the petition to the auditor within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition. The board shall submit the resolution or rule to the electors of the county, for their approval or rejection, at the succeeding general election held in the county in any year, or on the day of the succeeding primary election held in the county in even-numbered years, occurring subsequent to ninety days after the auditor certifies the sufficiency and validity of the petition to the board of elections.

No resolution shall go into effect until approved by the majority of those voting upon it. However, a rule shall take effect and remain in effect unless and until a majority of the electors voting on the question of repeal approve the repeal. Sections 305.31 to 305.41 of the Revised Code do not prevent a county, after the passage of any resolution or adoption of any rule, from proceeding at once to give any notice or make any publication required by the resolution or rule.

The board of county commissioners shall make available to any person, upon request, a certified copy of any resolution or rule subject to the procedure for submitting a referendum under sections 305.31 to 305.42 of the Revised Code beginning on the date the resolution or rule is adopted by the board. The board may charge a fee for the cost of copying the resolution or rule.

As used in this section, "certified copy" means a copy containing a written statement attesting that it is a true and exact reproduction of the original resolution or rule.

Sec. 306.322. (A) For any regional transit authority that levies a property tax and that includes in its membership political subdivisions that are located in a county having a population of at least four hundred thousand according to the most recent federal census, the procedures of this section apply until November 5, 2013, and are in addition to and an alternative to those established in sections 306.32 and 306.321 <u>of the Revised Code</u> for joining to the regional transit authority additional counties, municipal corporations, or townships.

(B) Any municipal corporation or township may adopt a resolution or ordinance proposing to join a regional transit authority described in division (A) of this section. In its resolution or ordinance, the political subdivision may propose joining the regional transit authority for a limited

period of three years or without a time limit.

(C) The political subdivision proposing to join the regional transit authority shall submit a copy of its resolution or ordinance to the legislative authority of each municipal corporation and the board of trustees of each township comprising the regional transit authority. Within thirty days of receiving the resolution or ordinance for inclusion in the regional transit authority, the legislative authority of each municipal corporation and the board of trustees of each township shall consider the question of whether to include the additional subdivision in the regional transit authority, shall adopt a resolution or ordinance approving or rejecting the inclusion of the additional subdivision, and shall present its resolution or ordinance to the board of trustees of the regional transit authority.

(D) If a majority of the political subdivisions comprising the regional transit authority approve the inclusion of the additional political subdivision, the board of trustees of the regional transit authority, not later than the tenth day following the day on which the last ordinance or resolution is presented, shall notify the subdivision proposing to join the regional transit authority that it may certify the proposal to the board of elections for the purpose of having the proposal placed on the ballot at the next general election or at a special election conducted on the day of the next primary election that occurs not less than ninety days after the resolution or ordinance is certified to the board of elections.

(E) Upon certification of a proposal to the board of elections pursuant to this section, the board of elections shall make the necessary arrangements for the submission of the question to the electors of the territory to be included in the regional transit authority qualified to vote on the question, and the election shall be held, canvassed, and certified in the same manner as regular elections for the election of officers of the subdivision proposing to join the regional transit authority, except that, if the resolution proposed the inclusion without a time limitation the question appearing on the ballot shall read:

"Shall the territory within the _____ (Name or names of political subdivisions to be joined) be added to _____ _____ (Name) regional transit authority?" and shall a(n) _____ (here insert type of tax or taxes) at a rate of taxation not to exceed _____ (here insert maximum tax rate or rates) be levied for all transit purposes?"

If the resolution proposed the inclusion with a three-year time limitation, the question appearing on the ballot shall read:

"Shall the territory within the _____ (Name or names of political subdivisions to be joined) be added to _____ _____ (Name) regional transit authority?" for three years and shall a(n) _____ (here insert type of tax or taxes) at a rate of taxation not to exceed _____ (here insert maximum tax rate or rates) be levied for all transit purposes for three years?"

(F) If the question is approved by at least a majority of the electors voting on the question, the addition of the new territory is effective six months from the date of the certification of its passage, and the regional transit authority may extend the levy of the tax against all the taxable property within the territory that was added. If the question is approved at a general election or at a special election occurring prior to the general election but after the fifteenth day of July, the regional transit authority may amend its budget and resolution adopted pursuant to section 5705.34 of the Revised Code, and the levy shall be placed on the current tax list and duplicate and collected as other taxes

are collected from all taxable property within the territorial boundaries of the regional transit authority, including the territory within the political subdivision added as a result of the election. If the budget of the regional transit authority is amended pursuant to this paragraph, the county auditor shall prepare and deliver an amended certificate of estimated resources to reflect the change in anticipated revenues of the regional transit authority.

(G) If the question is approved by at least a majority of the electors voting on the question, the board of trustees of the regional transit authority immediately shall amend the resolution or ordinance creating the regional transit authority to include the additional political subdivision.

(H) If the question approved by a majority of the electors voting on the question added the subdivision for three years, the territory of the additional municipal corporation or township in the regional transit authority shall be removed from the territory of the regional transit authority three years after the date the territory was added, as determined in the effective date of the election, and shall no longer be a part of that authority without any further action by either the political subdivisions that were included in the authority prior to submitting the question to the electors or of the political subdivision added to the authority as a result of the election. The regional transit authority reduced to its territory as it existed prior to the inclusion of the additional municipal corporation or township shall be entitled to levy and collect any property taxes that it was authorized to levy and collect prior to the enlargement of its territory and for which authorization has not expired, as if the enlargement had not occurred.

Sec. 307.671. (A) As used in this section:

(1) "Bonds" means, as the context requires: general obligation bonds of the county, or notes in anticipation thereof, described in division (B)(1)(b) of this section; revenue bonds of the port authority described in division (B)(2)(a) of this section; and urban renewal bonds, or notes in anticipation thereof, of the host municipal corporation described in division (B)(3)(a) of this section.

(2) "Corporation" means a nonprofit corporation that is organized under the laws of this state and that includes within the purposes for which it is incorporated the authorization to lease and operate facilities such as a port authority educational and cultural facility.

(3) "Debt service charges" means, for any period or payable at any time, the principal of and interest and any premium due on bonds for that period or payable at that time whether due at maturity or upon mandatory redemption, together with any required deposits to reserves for the payment of principal of and interest on such bonds, and includes any payments required by the port authority to satisfy any of its obligations arising from any guaranty agreements, reimbursement agreements, or other credit enhancement agreements described in division (C) of this section.

(4) "Host municipal corporation" means the municipal corporation within the boundaries of which the port authority educational and cultural facility is located.

(5) "Port authority" means a port authority created pursuant to the authority of section 4582.02 of the Revised Code by a county and a host municipal corporation.

(6) "Port authority educational and cultural facility" means a facility located within an urban renewal area that may consist of a museum, archives, library, hall of fame, center for contemporary music, or other facilities necessary to provide programs of an educational and cultural nature, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection

with, the operation of the facility.

(7) "Urban renewal area" means an area of a host municipal corporation that the legislative authority of the host municipal corporation has, at any time, designated as appropriate for an urban renewal project pursuant to Chapter 725. of the Revised Code.

(B) The board of county commissioners of a county, a port authority, and a host municipal corporation may enter into a cooperative agreement with a corporation, under which:

(1) The board of county commissioners agrees to do all of the following:

(a) Levy a tax under division ~~(D)~~ (N) of section 5739.09 of the Revised Code exclusively for the purposes described in divisions (B)(1)(c) and (d) of this section;

(b) Issue general obligation bonds of the county, or notes in anticipation thereof, pursuant to Chapter 133. of the Revised Code, for the purpose of acquiring, constructing, and equipping the port authority educational and cultural facility and contribute the proceeds from the issuance to the port authority for such purpose. The cooperative agreement may provide that such proceeds be deposited with and administered by the trustee pursuant to the trust agreement provided for in division (C) of this section.

(c) Following the issuance, sale, and delivery of the port authority revenue bonds provided for in division (B)(2)(a) of this section, and prior to the date certain stated in the cooperative agreement which shall be the date estimated for the completion of construction of the port authority educational and cultural facility, pledge and contribute to the port authority revenue from the tax levied pursuant to division (B)(1)(a) of this section, together with any investment earnings on that revenue, to pay a portion of the costs of acquiring, constructing, and equipping the port authority educational and cultural facility;

(d) Following such date certain, pledge and contribute to the corporation all or such portion as provided for in the cooperative agreement of the revenue from the tax, together with any investment earnings on that revenue, to pay a portion of the costs of the corporation of leasing the port authority educational and cultural facility from the port authority.

(2) The port authority agrees to do all of the following:

(a) Issue revenue bonds of the port authority pursuant to Chapter 4582. of the Revised Code for the purpose of acquiring, constructing, and equipping the port authority educational and cultural facility;

(b) Construct the port authority educational and cultural facility;

(c) Lease the port authority educational and cultural facility to the corporation;

(d) To the extent provided for in the cooperative agreement or the lease to the corporation, authorize the corporation to administer on behalf of the port authority the contracts for acquiring, constructing, or equipping a port authority educational and cultural facility;

(e) Use the revenue derived from the lease of the port authority educational and cultural facility to the corporation solely to pay debt service charges on the revenue bonds of the port authority described in division (B)(2)(a) of this section.

(3) The host municipal corporation agrees to do both of the following:

(a) Issue urban renewal bonds of the host municipal corporation, or notes in anticipation thereof, pursuant to Chapter 725. of the Revised Code for the purpose of acquiring and constructing the port authority educational and cultural facility and contribute the proceeds from the issuance to

the port authority for such purpose. The cooperative agreement may provide that such proceeds be deposited with and administered by the trustee pursuant to the trust agreement provided for in division (C) of this section.

(b) To the extent provided for in the cooperative agreement, contribute to the county, for use by the county to pay debt service charges on the bonds of the county, or notes in anticipation thereof, described in division (B)(1)(b) of this section, any excess urban renewal service payments pledged by the host municipal corporation to the urban renewal bonds described in division (B)(3)(a) of this section and not required on an annual basis to pay debt service charges on the urban renewal bonds.

(4) The corporation agrees to do all of the following:

(a) Lease the port authority educational and cultural facility from the port authority;

(b) Operate and maintain the port authority educational and cultural facility pursuant to the lease;

(c) To the extent provided for in the cooperative agreement or the lease from the port authority, administer on behalf of the port authority the contracts for acquiring, constructing, or equipping a port authority educational and cultural facility.

(C) The pledges and contributions described in divisions (B)(1)(c) and (d) of this section and provided for in the cooperative agreement shall be for the period stated in the cooperative agreement, but shall not be in excess of the period necessary to provide for the final retirement of the port authority revenue bonds provided for in division (B)(2)(a) of this section and any bonds issued by the port authority to refund such bonds, and for the satisfaction by the port authority of any of its obligations arising from any guaranty agreements, reimbursement agreements, or other credit enhancement agreements relating to such bonds or to the revenues pledged to such bonds. The cooperative agreement shall provide for the termination of the cooperative agreement including the pledges and contributions described in divisions (B)(1)(c) and (d) of this section if the port authority revenue bonds provided for in division (B)(2)(a) of this section have not been issued, sold, and delivered within two years of the effective date of the cooperative agreement.

The cooperative agreement shall provide that any revenue bonds of the port authority shall be secured by a trust agreement between the port authority and a corporate trustee that is a trust company or bank having the powers of a trust company within or outside the state. The county may be a party to such trust agreement for the purpose of securing the pledge by the county of its contribution to the corporation pursuant to division (B)(1)(d) of this section. A tax levied pursuant to division (B)(1)(a) of this section is not subject to diminution by initiative or referendum or diminution by statute, unless provision is made therein for an adequate substitute therefor reasonably satisfactory to the trustee under the trust agreement that secures the revenue bonds of the port authority.

(D) A pledge of money by a county under this section shall not be net indebtedness of the county for purposes of section 133.07 of the Revised Code.

(E) If the terms of the cooperative agreement so provide, any contract for the acquisition, construction, or equipping of a port authority educational and cultural facility shall be made in such manner as is determined by the board of directors of the port authority, and unless the cooperative agreement provides otherwise, such a contract is not subject to division (A) of section 4582.12 of the Revised Code. The port authority may take the assignment of and assume any contracts for the

acquisition, construction, and equipping of a port authority educational and cultural facility that previously have been authorized by either or both the host municipal corporation or the corporation. Such contracts likewise are not subject to division (A) of section 4582.12 of the Revised Code.

Any contract for the acquisition, construction, or equipping of a port authority educational and cultural facility entered into, assigned, or assumed pursuant to this division shall provide that all laborers and mechanics employed for the acquisition, construction, or equipping of the port authority educational and cultural facility shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the port authority educational and cultural facility, which wages shall be determined in accordance with the requirements of Chapter 4115. of the Revised Code for the determination of prevailing wage rates.

Sec. 307.672. (A) As used in this section:

(1) "Bonds" means general obligation bonds, or notes in anticipation thereof, of the county described in division (B)(1)(b) of this section, and general obligation bonds, or notes in anticipation thereof, of the host municipal corporation described in division (B)(2)(a) of this section.

(2) "Corporation" means a nonprofit corporation that is organized under the laws of this state and that includes within the purposes for which it is incorporated the authorization to lease and operate facilities such as a municipal educational and cultural facility.

(3) "Debt service charges" means, for any period or payable at any time, the principal of and interest and any premium due on bonds for that period or payable at that time whether due at maturity or upon mandatory redemption, together with any required deposits to reserves for the payment of principal of and interest on such bonds.

(4) "Host municipal corporation" means the municipal corporation within the boundaries of which a municipal educational and cultural facility is or will be located.

(5) "Municipal educational and cultural facility" means a facility that may consist of a museum, archives, library, hall of fame, center for contemporary music, or other facilities necessary to provide programs of an educational, recreational, and cultural nature, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection with, the operation of the facility.

(B) The legislative authorities of a county and a host municipal corporation may enter into a cooperative agreement with a corporation, under which:

(1) The legislative authority of the county agrees to:

(a) Levy a tax under division ~~(E)~~ (O) of section 5739.09 of the Revised Code, for a period not to exceed fifteen years unless extended under that division for an additional period of time, to pay the costs of acquiring, constructing, equipping, and improving a municipal educational and cultural facility, including the debt service charges on bonds;

(b) Issue bonds of the county pursuant to Chapter 133. of the Revised Code for the purpose of acquiring, constructing, equipping, and improving a municipal educational and cultural facility;

(c) Contribute revenue from the tax and the proceeds from the bonds described in divisions (B)(1)(a) and (b) of this section to the host municipal corporation for the purpose of acquiring, constructing, equipping, and improving a municipal educational and cultural facility;

(2) The host municipal corporation agrees to:

(a) Issue bonds of the host municipal corporation pursuant to Chapter 133. of the Revised Code for the purpose of acquiring, constructing, equipping, and improving a municipal educational and cultural facility;

(b) Acquire, construct, equip, and improve a municipal educational and cultural facility;

(c) Accept from the county pursuant to the cooperative agreement the revenues of the tax and the proceeds of the bonds described in divisions (B)(1)(a) and (b) of this section;

(d) Lease a municipal educational and cultural facility to the corporation, or contract with the corporation for the operation and maintenance of the facility;

(e) To the extent provided for in the cooperative agreement or the lease or contract with the corporation, authorize the corporation to administer on behalf of the host municipal corporation the contracts for acquiring, constructing, equipping, and improving a municipal educational and cultural facility.

(3) The corporation agrees to:

(a) Either lease the municipal educational and cultural facility from the host municipal corporation and operate and maintain the facility pursuant to the lease, or enter into a contract with the host municipal corporation pursuant to which the corporation shall operate and maintain the facility on behalf of the host municipal corporation;

(b) To the extent provided for in the cooperative agreement or the lease or contract with the host municipal corporation, administer on behalf of the host municipal corporation the contracts for acquiring, constructing, equipping, or improving a municipal educational and cultural facility.

(C) A tax levied pursuant to division ~~(E)~~ (O) of section 5739.09 of the Revised Code, the revenue from which is to be used to pay debt service charges on bonds described in division (B)(1) or (2) of this section is not subject to diminution by initiative or referendum or diminution by statute, unless provision is made therein for an adequate substitute therefor reasonably satisfactory to the legislative authorities of the host municipal corporation and the county.

(D) The legislative authorities of a county and a host municipal corporation that have entered into a cooperative agreement with a corporation pursuant to division (B) of this section may amend that cooperative agreement, with the participation of the corporation and a port authority as defined in section 307.674 of the Revised Code, to provide also for a port authority educational and cultural performing arts facility in accordance with section 307.674 of the Revised Code. Such an amendment shall become effective only to the extent that the tax levied under division ~~(E)~~ (O) of section 5739.09 of the Revised Code is not needed for the duration of the original tax to pay costs of the municipal educational and cultural facility, including debt service charges on related bonds, as determined by the parties to the amendment. The tax may be pledged and paid by the parties to the amendment for the balance of the duration of the tax to a port authority educational and cultural performing arts facility.

Sec. 307.674. (A) As used in this section:

(1) "Bonds" means:

(a) Revenue bonds of the port authority described in division (B)(2)(a) of this section;

(b) Securities as defined in division (KK) of section 133.01 of the Revised Code issued by the host municipal corporation, described in division (B)(3)(a) of this section;

(c) Any bonds issued to refund any of those revenue bonds or securities.

(2) "Corporation" means a nonprofit corporation that is organized under the laws of this state and that includes within the purposes for which it is incorporated the authorization to lease and operate facilities such as a port authority educational and cultural performing arts facility.

(3) "Cost," as applied to a port authority educational and cultural performing arts facility, means the cost of acquiring, constructing, renovating, rehabilitating, equipping, or improving the facility, or any combination of those purposes, collectively referred to in this section as "construction," and the cost of acquisition of all land, rights of way, property rights, easements, franchise rights, and interests required for those purposes, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which those buildings or structures may be moved, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for not more than three years after completion of construction, costs arising under guaranty agreements, reimbursement agreements, or other credit enhancement agreements relating to bonds, engineering, expenses of research and development with respect to such facility, legal expenses, plans, specifications, surveys, studies, estimates of costs and revenues, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing the facility, administrative expense, and other expenses as may be necessary or incident to that acquisition or construction and the financing of such acquisition or construction, including, with respect to the revenue bonds of a port authority, amounts to be paid into any special funds from the proceeds of those bonds, and repayments to the port authority, host county, host municipal corporation, or corporation of any amounts advanced for the foregoing purposes.

(4) "Debt service charges" means, for any period or payable at any time, the principal of and interest and any premium due on bonds for that period or payable at that time whether due at maturity or upon mandatory redemption, together with any required deposits to reserves for the payment of principal of and interest on those bonds, and includes any payments required by the port authority to satisfy any of its obligations under or arising from any guaranty agreements, reimbursement agreements, or other credit enhancement agreements described in division (C) of this section.

(5) "Host county" means the county within the boundaries of which the port authority educational and cultural performing arts facility is or will be located.

(6) "Host municipal corporation" means the municipal corporation within the boundaries of which the port authority educational and cultural performing arts facility is or will be located.

(7) "Port authority" means a port authority created pursuant to section 4582.22 of the Revised Code.

(8) "Port authority educational and cultural performing arts facility" means a facility that consists of a center for music or other performing arts, a theater or other facilities to provide programs of an educational, recreational, or cultural nature, or any combination of those purposes as determined by the parties to the cooperative agreement for which provision is made in division (B) of this section to fulfill the public educational, recreational, and cultural purposes set forth therein, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection with, the operation of the facility.

(B) A host county, a host municipal corporation, and a port authority may enter into a cooperative agreement with a corporation under which, as further provided for in that agreement:

(1) The host county may agree to do any or all of the following:

(a) Levy and collect a tax under ~~division (E)~~ divisions (O) and ~~division (F)~~ (P) of section 5739.09 of the Revised Code for the purposes, and in an amount sufficient for those purposes, described in divisions (B)(1)(b) and (c) of this section;

(b) Pay to the port authority all or such portion as provided for in the cooperative agreement of the revenue from the tax, together with any investment earnings on that revenue, to be used to pay a portion of the costs of acquiring, constructing, renovating, rehabilitating, equipping, or improving the port authority educational and cultural performing arts facility;

(c) Pledge and pay to the corporation all or such portion as provided for in the cooperative agreement of the revenue from the tax, together with any investment earnings on that revenue, to be used to pay a portion of the costs to the corporation of leasing the port authority educational and cultural performing arts facility from the port authority.

(2) The port authority may agree to do any or all of the following:

(a) Issue its revenue bonds pursuant to section 4582.48 of the Revised Code for the purpose of paying all or a portion of the costs of the port authority educational and cultural performing arts facility;

(b) Acquire, construct, renovate, rehabilitate, equip, and improve the port authority educational and cultural performing arts facility;

(c) Lease the port authority educational and cultural performing arts facility to the corporation;

(d) To the extent provided for in the cooperative agreement or the lease to the corporation, authorize the corporation to administer on behalf of the port authority the contracts for acquiring, constructing, renovating, rehabilitating, or equipping the port authority educational and cultural performing arts facility;

(e) Use the revenue derived from the lease of the port authority educational and cultural performing arts facility to the corporation solely to pay debt service charges on revenue bonds of the port authority issued pursuant to division (B)(2)(a) of this section and to pay its obligations under or arising from any guaranty agreements, reimbursement agreements, or other credit enhancement agreements provided for in this section.

(3) The host municipal corporation may agree to do either or both of the following:

(a) Issue its bonds for the purpose of paying all or a portion of the costs of the port authority educational and cultural performing arts facility, and pay the proceeds from the issuance to the port authority for that purpose;

(b) Enter into a guaranty agreement, a reimbursement agreement, or other credit enhancement agreement with the port authority to provide a guaranty or other credit enhancement of the port authority revenue bonds referred to in division (B)(2)(a) of this section pledging taxes, other than ad valorem property taxes, or other revenues for the purpose of providing the funds required to satisfy the host municipal corporation's obligations under that agreement.

The cooperative agreement may provide that the proceeds of such securities or of such guaranty agreement, reimbursement agreement, or other credit enhancement agreement be deposited

with and administered by the trustee pursuant to the trust agreement authorized in division (C) of this section.

(4) The corporation may agree to do any or all of the following:

(a) Lease the port authority educational and cultural performing arts facility from the port authority;

(b) Operate and maintain the port authority educational and cultural performing arts facility pursuant to the lease;

(c) To the extent provided for in the cooperative agreement or the lease from the port authority, administer on behalf of the port authority the contracts for acquiring, constructing, renovating, rehabilitating, or equipping the port authority educational and cultural performing arts facility.

(C) The pledge and payments referred to in divisions (B)(1)(b) and (c) of this section and provided for in the cooperative agreement shall be for the period stated in the cooperative agreement but shall not extend longer than the period necessary to provide for the final retirement of the port authority revenue bonds referred to in division (B)(2)(a) of this section, and for the satisfaction by the port authority of any of its obligations under or arising from any guaranty agreements, reimbursement agreements, or other credit enhancement agreements relating to those bonds or to the revenues pledged to them. The cooperative agreement shall provide for the termination of the cooperative agreement, including the pledge and payment referred to in division (B)(1)(c) of this section, if the port authority revenue bonds referred to in division (B)(2)(a) of this section have not been issued, sold, and delivered within five years of the effective date of the cooperative agreement.

The cooperative agreement shall provide that any port authority revenue bonds shall be secured by a trust agreement between the port authority and a corporate trustee that is a trust company or bank having the powers of a trust company within or outside the state but authorized to exercise trust powers within the state. The host county may be a party to that trust agreement for the purpose of better securing the pledge by the host county of its payment to the corporation pursuant to division (B)(1)(c) of this section. A tax levied pursuant to section 5739.09 of the Revised Code for the purposes specified in division (B)(1)(b) or (c) of this section is not subject to diminution by initiative or referendum or diminution by statute, unless provision is made for an adequate substitute reasonably satisfactory to the trustee under the trust agreement that secures the port authority revenue bonds.

(D) A pledge of money by a host county under this section shall not be net indebtedness of the host county for purposes of section 133.07 of the Revised Code. A guaranty or other credit enhancement by a host municipal corporation under this section shall not be net indebtedness of the host municipal corporation for purposes of section 133.05 of the Revised Code.

(E) If the terms of the cooperative agreement so provide, any contract for the acquisition, construction, renovation, rehabilitation, equipping, or improving of a port authority educational and cultural performing arts facility shall be made in such manner as is determined by the board of directors of the port authority, and unless the cooperative agreement provides otherwise, such a contract is not subject to division ~~(R)(2)~~ (A)(18)(b) of section 4582.31 of the Revised Code. The port authority may take the assignment of and assume any contracts for the acquisition, construction, renovation, rehabilitation, equipping, or improving of a port authority educational and cultural

performing arts facility that had previously been authorized by any of the host county, the host municipality, or the corporation. Such contracts are not subject to division ~~(R)(2)~~ (A)(18)(b) of section 4582.31 of the Revised Code.

Any contract for the acquisition, construction, renovation, rehabilitation, equipping, or improving of a port authority educational and cultural performing arts facility entered into, assigned, or assumed pursuant to this division shall provide that all laborers and mechanics employed for the acquisition, construction, renovation, rehabilitation, equipping, or improving of that facility shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the port authority educational and cultural performing arts facility, which wages shall be determined in accordance with the requirements of Chapter 4115. of the Revised Code for the determination of prevailing wage rates.

Notwithstanding any provisions to the contrary in section 123.281 of the Revised Code, construction services and general building services for a port authority educational and cultural performing arts facility funded completely or in part with money appropriated by the state to the Ohio facilities construction commission may be provided by a port authority or a corporation that occupies, will occupy, or is responsible for that facility, as determined by the commission. The construction services and general building services to be provided by the port authority or the corporation shall be specified in an agreement between the commission and the port authority or corporation. That agreement, or any actions taken under it, are not subject to Chapters 123. or 153. of the Revised Code, but are subject to Chapter 4115. of the Revised Code.

Sec. 307.678. (A) As used in this section:

(1) "Bureau" means a nonprofit corporation that is organized under the laws of this state that is, or has among its functions acting as, a convention and visitors' bureau, and that currently receives revenue from existing lodging taxes.

(2) "Cooperating parties" means the parties to a cooperative agreement.

(3) "Cooperative agreement" means an agreement entered into pursuant to or as contemplated by this section.

(4) "Credit enhancement facilities" has the same meaning as in section 133.01 of the Revised Code.

(5) "Debt charges" has the same meaning as in section 133.01 of the Revised Code, except that "obligations" shall be substituted for "securities" wherever "securities" appears in that section.

(6) "Eligible county" means a county within the boundaries of which any part of a tourism development district is located.

(7) "Eligible transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code, within the boundaries of which any part of a tourism development district is located.

(8) "Existing lodging taxes" means taxes levied by a board of county commissioners of an eligible county under ~~division~~ divisions (A) to (L) of section 5739.09 of the Revised Code.

(9) "Financing costs" means all costs, fees, and expenses relating to the authorization, including any required election, issuance, sale, delivery, authentication, deposit, custody, clearing, registration, transfer, exchange, fractionalization, replacement, payment, and servicing, of

obligations, including, without limitation, costs and expenses for or relating to publication and printing, postage, delivery, preliminary and final official statements, offering circulars, placement memoranda, and informational statements, travel and transportation, underwriters, placement agents, investment bankers, paying agents, registrars, authenticating agents, remarketing agents, custodians, clearing agencies, companies, or corporations, securities depositories, issuers, financial advisory services, certifications, audits, federal or state regulatory agencies, accounting and computation services, legal services and obtaining approving legal opinions and other legal opinions, credit ratings, paying redemption premiums, and credit enhancement facilities. Financing costs may be paid from any money available for the purpose, including, unless otherwise provided in the proceedings, from the proceeds of the obligations to which they relate and, as to future financing costs, from the same sources from which debt charges on the obligations are paid and as though debt charges.

(10) "Host municipal corporation" means a municipal corporation within the boundaries of which any part of a tourism development district is located.

(11) "Host school district" means a school district within the boundaries of which any part of a tourism development district is located.

(12) "Incremental sales tax growth" has the same meaning as in section 5739.213 of the Revised Code, except that, in the case of an eligible county, "incremental sales tax growth" shall include only the amount of taxes levied under sections 5739.021 and 5739.026 of the Revised Code credited to the county's general fund.

(13) "Issuer" means a port authority, a new community authority, or any other issuer, as defined in section 133.01 of the Revised Code, and any corporation.

(14) "Maintenance and repair costs" means costs and expenses incurred by a cooperating party from the party's own revenues for maintaining or repairing a project.

(15) "Net lodging tax proceeds" means the proceeds of an existing lodging tax that remain after deduction by an eligible county of the real and actual costs of administering the tax and any portion of such proceeds required to be returned to a municipal corporation or township under division (A)~~(1)~~ of section 5739.09 of the Revised Code.

(16) "Net tourism development district revenues" means the tourism development district revenues remaining after deduction by the host municipal corporation of an amount, not to exceed one per cent of any admissions tax revenues, prescribed in any legislation by which, or agreement pursuant to which, tourism development district revenues are pledged, or agreed to be pledged or contributed, by an eligible county, an eligible transit authority, or a host municipal corporation, or any combination thereof, in accordance with division (B), (E), (F), or (G) of this section.

(17) "New community authority" means a new community authority established under section 349.03 of the Revised Code by an organizational board of commissioners that is or includes the board of county commissioners of an eligible county or the legislative authority of a host municipal corporation.

(18) "Obligations" means obligations issued or incurred by an issuer pursuant to Chapter 133., 349., or 4582. of the Revised Code, or otherwise, for the purpose of funding or paying, or reimbursing persons for the funding or payment of, project costs, and that evidence the issuer's obligation to repay borrowed money, including interest thereon, or to pay other money obligations of the issuer at any future time, including, without limitation, bonds, notes, anticipatory securities as

defined in section 133.01 of the Revised Code, certificates of indebtedness, commercial paper, or installment sale, lease, lease-purchase, or similar agreements. "Obligations" does not include credit enhancement facilities.

(19) "Person" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, eligible county, eligible transit authority, host municipal corporation, port authority, new community authority, and any other political subdivision of the state.

(20) "Port authority" means a port authority created under Chapter 4582. of the Revised Code.

(21) "Project" means acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, equipping, furnishing, or otherwise improving a tourism facility or any component or element thereof.

(22) "Project cost" means the cost of acquiring, constructing, reconstructing, rehabilitating, remodeling, renovating, enlarging, equipping, financing, refinancing, furnishing, or otherwise improving a project, including, without limitation, financing costs; the cost of architectural, engineering, and other professional services, designs, plans, specifications, surveys, and estimates of costs; financing or refinancing obligations issued by, or reimbursing money advanced by, any cooperating party or any other person, where the proceeds of the obligations or money advanced was used to pay any other cost described in this division; inspections and testing; any indemnity or surety bond or premium related to insurance pertaining to development of the project; all related direct and indirect administrative costs and costs of placing a project in service; fees and expenses of trustees, escrow agents, depositories, and paying agents for any obligations; interest on obligations during the planning, design, and development of a project and for up to eighteen months thereafter; funding and replenishing reserves for the payment of debt charges on any obligations; all other expenses necessary or incident to planning, or determining the feasibility or practicability of, a project, including, without limitation, advocating the enactment of legislation to facilitate the development and financing of a project; and any other costs of a project that are authorized to be financed by the issuer of obligations at the time the obligations are issued.

(23) "Taxing authority" means the board of county commissioners of an eligible county, the legislative authority, as that term is defined in section 5739.01 of the Revised Code, of an eligible transit authority, or the legislative authority of a host municipal corporation.

(24) "Tourism development district" means an area designated by a host municipal corporation under section 715.014 of the Revised Code.

(25) "Tourism development district revenues" means money received or receivable by a host municipal corporation from incremental sales tax growth pursuant to section 5739.213 of the Revised Code, from a tax levied by the host municipal corporation pursuant to division (C) of section 5739.101 of the Revised Code, from a tax levied by the host municipal corporation pursuant to section 5739.08 or 5739.09 of the Revised Code on the provision of lodging by hotels located in the tourism development district, from a tax levied by the host municipal corporation with respect to admission to any tourism facility or parking or any other activity occurring at any location in the tourism development district, or from any tax levied by an eligible county, eligible transit authority, or host municipal corporation, except for a tax on property levied by an eligible county, with respect to activities occurring, or property located, in the tourism development district, if and to the extent

that revenue from any such tax is authorized to be used, or is not prohibited by law from being used, to foster and develop tourism in the tourism development district and is authorized, contracted, pledged or assigned by the respective taxing authority to be used to fund or pay, or to reimburse other persons for funding or payment of, project costs or maintenance and repair costs.

(26) "Tourism facility" means any permanent improvement, as defined in section 133.01 of the Revised Code, located in a tourism development district.

(B) The board of county commissioners of an eligible county, an eligible transit authority, a host municipal corporation, the board of education of a host school district, a port authority, a bureau, a new community authority, and any other person, or any combination thereof, may enter into a cooperative agreement for any purpose authorized under this section and under which any of the following apply:

(1) The board of county commissioners of the eligible county and the bureau agree to make available to a cooperating party or any other person net lodging tax proceeds, not to exceed five hundred thousand dollars each year, to fund or pay, or to reimburse other persons for funding or payment of, project costs or debt charges on obligations.

(2) The board of county commissioners of the eligible county agrees, for the purpose of funding or paying or supporting, or for reimbursing other persons for funding or payment of, project costs, including debt charges on obligations, may do either of the following:

(a) Make available to a cooperating party or other person an amount equal to incremental sales tax growth or all or a portion of the county's tourism development district revenues;

(b) Provide, from receipts of a tax levied by the county under division ~~(A)(11)~~ (K) of section 5739.09 of the Revised Code, credit enhancement facilities in connection with the funding or payment of project costs, including debt charges on obligations, or any portion or combination thereof.

(3) The taxing authority of an eligible transit authority agrees to make available to a cooperating party or any other person an amount equal to incremental sales tax growth or all or a portion of the transit authority's tourism development district revenues.

(4) The host municipal corporation agrees to make available credit enhancement facilities or net tourism development district revenues, or any portion or combination thereof, to fund, pay, or support, or to reimburse other persons for funding or payment of, project costs, including debt charges on obligations, or maintenance and repair costs, or both. Any agreement to use net tourism development district revenues to pay or reimburse other persons for payment of maintenance and repair costs shall be subject to authorization by any cooperating party providing such funding to the host municipal corporation and to annual appropriation for such purpose by the legislative authority of the host municipal corporation and shall be subordinate to any covenant made to or by an issuer in connection with the issuance of obligations or credit enhancement facilities to pay project costs.

(5) The cooperating parties agree, subject to any conditions or limitations provided in the cooperative agreement, to any of the following:

(a) The conveyance, grant, or transfer to a cooperating party or any other person of ownership of, property interests in, and rights to use real or personal property to create a tourism facility or with respect to a tourism facility as the facility exists at the time of the agreement or as it may be improved by a project;

(b) The respective responsibilities of each cooperating party for the management, operation, maintenance, repair, and replacement of a tourism facility, including any project undertaken with respect to the facility, which may include authorization for a cooperating party to contract with any other person for any such purpose;

(c) The respective responsibilities of each cooperating party for the development and financing of a project, including, without limitation, the cooperating party or parties that shall be responsible for contracting for the development of a project and administering contracts entered into by the party or parties for that purpose;

(d) The respective responsibilities of each cooperating party to provide money, credit enhancement facilities, or both, whether by issuing obligations or otherwise, for the funding, payment, financing, or refinancing, or reimbursement to a cooperating party or other person for the funding, payment, financing, or refinancing, of project costs;

(e) The respective responsibilities of each cooperating party to provide money, credit enhancement facilities, or other security for the payment of debt charges on obligations or to fund or replenish reserves or otherwise provide for the payment of maintenance and repair costs.

(C) Any conveyance, grant, or transfer of ownership of, property interests in, or rights to use a tourism development facility or project, including any project undertaken with respect to an existing tourism facility, that is contemplated by a cooperative agreement may be made or entered into by a cooperating party, in such manner and upon such terms as the cooperating parties may agree, without regard to ownership of the tourism facility or project, notwithstanding any other provision of law that may otherwise apply, including, without limitation, any requirement for notice, competitive bidding or selection, or the provision of security.

(D) The board of county commissioners may amend any previously adopted resolution providing for the levy of an existing lodging tax to permit the use of any portion of the net lodging tax proceeds from such tax as provided in this section if and to the extent such use is not inconsistent with a cooperative agreement. A host municipal corporation may amend any previously passed ordinance providing for the levy of lodging taxes under section 5739.08 or 5739.09 of the Revised Code to permit the use of any portion of such lodging taxes as provided in this section.

(E)(1) Notwithstanding any other provision of law:

(a) The board of county commissioners of an eligible county may provide, from receipts of a tax levied by the county under division ~~(A)(11)~~ (K) of section 5739.09 of the Revised Code, credit enhancement facilities in connection with any project, including, without limitation, for the provision of any infrastructure necessary to support a tourism facility.

(b) The board of county commissioners of an eligible county and a bureau may agree to make available to any person, on such terms and conditions as the board and the bureau may determine and agree, net lodging tax proceeds.

(c) The board of county commissioners of an eligible county may agree to make available to any person, on such terms and conditions as the board may determine and agree, incremental sales tax growth and all or a portion of the county's tourism development district revenues.

(2) Any amount made available under division (E)(1)(b) or (c) of this section shall be used to fund or pay, or to reimburse other persons for funding or payment of, project costs, including, without limitation, the payment of debt charges on obligations, the provision of credit enhancement

facilities and the funding, and funding and replenishing reserves for that purpose or, subject to annual appropriation, to pay, or reimburse other persons for payment of, repair and maintenance costs.

(3) The board of county commissioners, the bureau, or both, may pledge net lodging tax proceeds, and the board of county commissioners may pledge incremental sales tax growth and any tourism development district revenues, or any part or portion or combination thereof, to the payment of debt charges on obligations and the funding, or to fund or replenish reserves for that purpose; provided that, the total amount of net lodging tax proceeds made available for such use each year shall not exceed five hundred thousand dollars.

The lien of any such pledge shall be effective against all persons when it is made, without the requirement for the filing of any notice, and any such net lodging tax proceeds, incremental sales tax growth, and tourism development district revenues, or any part or portion or combination thereof, so pledged and required to pay debt charges on obligations, to provide any credit enhancement facilities or to fund, or to fund or replenish reserves, or any combination thereof, shall be paid by the county or bureau at the times, in the amounts, and to such payee, including, without limitation, a corporate trustee or paying agent, to which the board of county commissioners and bureau agree with respect to net lodging tax proceeds and to which the board of county commissioners agree with respect to incremental sales tax growth or tourism development district revenues.

(F) Notwithstanding any other provision of law, a host municipal corporation may agree to make available to any person, on such terms and conditions to which it may determine and agree, and any person may use, net tourism development district revenues, or any part or portion thereof, to fund or pay, or to reimburse other persons for funding or payment of, project costs, including, without limitation, the payment of debt charges on obligations and the funding, and funding and replenishing reserves for that purpose, or, subject to annual appropriation, to pay, or to reimburse other persons for payment of maintenance and repair costs, and the host municipal corporation may pledge net tourism development district revenues, or any part or portion thereof, to the payment of debt charges on obligations and to fund and replenish reserves for that purpose and may provide credit enhancement facilities. The lien of any such pledge shall be effective against all persons when it is made, without the requirement for the filing of any notice, and any net tourism development district revenues so pledged and required to pay debt charges on obligations or to fund and replenish reserves shall be paid by the host municipal corporation at the times, in the amounts, and to such payee, including, without limitation, a corporate trustee or paying agent, to which the host municipal corporation agrees.

(G) Notwithstanding any other provision of law, an eligible transit authority may agree to make available, on such terms and conditions to which it may determine and agree, to any person, and any person may use, incremental sales tax growth and tourism development district revenues, or any part or portion or combination thereof, to fund or pay, or to reimburse other persons for funding or payment of, project costs, including, without limitation, the payment of debt charges on obligations and the funding and replenishing of reserves for that purpose, or, subject to annual appropriation, to pay, or to reimburse any other person for payment of, maintenance and repair costs, and the eligible transit authority may pledge incremental sales tax growth and tourism development district revenues, or any part or portion or combination thereof, to the payment of debt charges on obligations and the funding and replenishing of reserves for that purpose. The lien of any such pledge

shall be effective against all persons when it is made, without the requirement for the filing of any notice, and any incremental sales tax growth and tourism development district revenues, or any part or portion or combination thereof, so pledged and required to pay debt charges on obligations or to fund and replenish reserves shall be paid by the eligible transit authority at the times, in the amounts, and to such payee, including, without limitation, a corporate trustee or paying agent, to which the eligible transit authority agrees.

(H) Except as provided herein with respect to agreements for the payment or reimbursement of maintenance and repair costs, if the term of an agreement made pursuant to division (B), (E), (F), or (G) of this section extends beyond the end of the fiscal year of the eligible county, eligible transit authority, or host municipal corporation in which it is made, the agreement shall be subject to section 5705.44 of the Revised Code, and subject to the certification required by that section, the amount due under any such agreement in each succeeding fiscal year shall be included in the annual appropriation measure of the eligible county, eligible transit authority, or host municipal corporation for each such fiscal year as a fixed charge. The obligation of an eligible county, eligible transit authority, or host municipal corporation, and of each official thereof, to include the amount required to be paid in any such fiscal year in its annual appropriation measure as a fixed charge and to make such payments from and to the extent of the amounts so pledged, or agreed to be contributed or pledged, shall be a duty specially enjoined by law and resulting from an office, trust, or station under section 2731.01 of the Revised Code, enforceable by writ of mandamus.

(I)(1) Each tourism facility and project constitutes a "port authority facility" within the meaning of division (D) of section 4582.01 and division (E) of section 4582.21 of the Revised Code, and a port authority may issue obligations under Chapter 4582. of the Revised Code, subject only to the procedures and requirements applicable to its issuance of revenue bonds as provided in division (A)(4) of section 4582.06 of the Revised Code or of port authority revenue bonds as provided in division (A)(8) of section 4582.31 of the Revised Code. For the purpose of issuing any such obligations, any net lodging tax proceeds, net tourism development district revenues, amounts provided pursuant to any credit enhancement facilities, and revenue from any other tax pledged, assigned, or otherwise obligated to be contributed to the payment of the obligations shall be treated as revenues of the port authority for the purposes of division (A)(4) of section 4582.06 of the Revised Code and revenues, as defined in section 4582.21 of the Revised Code. Any obligations issued under division (I)(1) of this section shall be considered revenue bonds issued under division (A)(4) of section 4582.06 of the Revised Code or port authority revenue bonds issued under division (A)(8) of section 4582.31 and section 4582.48 of the Revised Code for all purposes. In addition to all other powers available to a port authority under this section or under Chapter 4582. of the Revised Code with respect to the issuance of or provision for the security for payment of debt charges on obligations, and with respect to any tourism facility or project, the port authority may take any of the actions contemplated by Chapter 4582. of the Revised Code, including, without limitation, any actions contemplated by section 4582.06, 4582.31, or 4582.47 of the Revised Code. Obligations issued by a port authority pursuant to division (I)(1) of this section shall be special obligations of the port authority and do not constitute bonded indebtedness, a general obligation, debt, or a pledge of the full faith and credit of the state, the port authority, or any other political subdivision of the state.

(2) Each tourism facility and project constitutes "community facilities" within the meaning of

division (I) of section 349.01 of the Revised Code, and a new community authority may issue obligations pursuant to Chapter 349. of the Revised Code subject only to the procedures and requirements applicable to its issuance of bonds or notes as used in and pursuant to section 349.08 of the Revised Code. For the purpose of issuing any such obligations, net lodging tax proceeds, net tourism development district revenues, and revenue from any other tax pledged, assigned, or otherwise obligated to be contributed to the payment of the obligations shall be treated as an income source, as defined in section 349.01 of the Revised Code. Any obligations issued under division (I)(2) of this section shall be considered bonds issued under section 349.08 of the Revised Code. In addition to all other powers available to a new community authority under division (I)(2) of this section or under Chapter 349. of the Revised Code with respect to the issuance of or provision for the security for payment of debt charges on obligations, and with respect to any tourism facility or project, the new community authority may take any of the actions contemplated by Chapter 349. of the Revised Code. Obligations issued by a new community authority pursuant to division (I)(2) of this section shall be special obligations of the new community authority and do not constitute bonded indebtedness, a general obligation, debt, or a pledge of the full faith and credit of the state, the new community authority, or any other political subdivision of the state.

(J) Each project for which funding or payment of project costs is provided, in whole or in part, by the issuance of obligations secured by a pledge of net lodging tax proceeds or net tourism development district revenues, or both, and any agreement to provide credit enhancement facilities or to fund or pay, and the funding or payment of, such project costs and any maintenance and repair costs of the project from net lodging taxes and net tourism development district revenues, are hereby determined, regardless of the ownership, leasing, or use of the project by any person, to constitute implementing and participating in the development of sites and facilities within the meaning of Section 2p of Article VIII, Ohio Constitution, including division (D)(3) of that section, and any such obligations are hereby determined to be issued, and any such credit enhancement facilities and agreements to fund or pay, and funding and payment of, project costs and any maintenance and repair costs of the project, are determined to be made, under authority of Section 2p of Article VIII, Ohio Constitution, for and in furtherance of site and facility development purposes within the meaning of division (E) of that section, pursuant to provision made by law for the procedure for incurring and issuing obligations, separately or in combination with other obligations, and refunding, retiring, and evidencing obligations, and pursuant to division (F) of Section 2p of Article VIII, Ohio Constitution, such that provision for the payment of debt charges on the obligations, credit enhancement facilities, or both, the purposes and uses to which and the manner in which the proceeds of those obligations or credit enhancement facilities or money from other sources are to be or may be applied, and other implementation of those development purposes as referred to in this section, including the manner determined by an issuer to participate for those purposes, are not subject to Sections 4 and 6 of Article VIII, Ohio Constitution.

No obligations may be issued under this section to fund or pay maintenance and repair costs.

(K) No obligations may be issued under this section unless the issuer's fiscal officer determines that the net lodging tax proceeds, net tourism development district revenues, or both, pledged, assigned, or otherwise obligated to be contributed to the payment of debt charges on such obligations and all other obligations issued, outstanding and payable therefrom, are expected to be

sufficient to pay all debt charges on all such obligations except to any extent that such debt charges are to be paid from proceeds of obligations or refunding obligations deposited or to be deposited into a pledged fund or account, including any reserve fund or account, or investment earnings thereon.

(L)(1) A board of county commissioners shall not repeal, rescind, or reduce the levy of an existing lodging tax or the source of any other revenue to the extent revenue from that tax or source is pledged to the payment of debt charges on obligations, and any such lodging tax or other revenue source shall not be subject to repeal, rescission, or reduction by initiative, referendum, or subsequent enactment of legislation by the general assembly, so long as there remain outstanding any obligations as to which the payment of debt charges is secured by a pledge of the existing lodging tax or other revenue source.

(2) The legislative authority of a host municipal corporation shall not repeal, rescind, or reduce the levy of any tax the proceeds of which constitute tourism development district revenues if its proceeds are pledged to the payment of debt charges on obligations, and any such tax shall not be subject to repeal, rescission, or reduction by initiative, referendum, or subsequent enactment of legislation by the general assembly, so long as there remain outstanding any obligations as to which the payment of debt charges is secured by a pledge of those net tourism development district revenues.

(3) A transit authority shall not repeal, rescind, or reduce the levy of any tax the proceeds of which are pledged to the payment of debt charges on obligations, and any such tax shall not be subject to repeal, rescission, or reduction by initiative, referendum, or subsequent enactment of legislation by the general assembly, so long as there remain outstanding any obligations as to which the payment of debt charges is secured by the pledge of such tax proceeds.

(M) A pledge, assignment, or other agreement to contribute net lodging tax proceeds or other revenues or credit enhancement facilities made by an eligible county under division (B) or (E) of this section; a pledge, assignment, or other agreement to contribute net tourism development district revenues or credit enhancement facilities made by a host municipality under division (B) or (F) of this section; and a pledge, assignment, or other agreement made by an eligible county or eligible transit authority or agreement to contribute revenue from taxes that constitute tourism development district revenues under division (B), (E), or (G) of this section, do not constitute bonded indebtedness, or indebtedness for the purposes of Chapter 133. of the Revised Code, of an eligible county, eligible transit authority, or host municipal corporation.

(N) The authority provided by this section is supplemental to, and is not intended to limit in any way, any legal authority that a cooperating party or any other person may have under any other provision of law.

Sec. 307.695. (A) As used in this section:

(1) "Arena" means any structure designed and constructed for the purpose of providing a venue for public entertainment and recreation by the presentation of concerts, sporting and athletic events, and other events and exhibitions, including facilities intended to house or provide a site for one or more athletic or sports teams or activities, spectator facilities, parking facilities, walkways, and auxiliary facilities, real and personal property, property rights, easements, leasehold estates, and interests that may be appropriate for, or used in connection with, the operation of the arena.

(2) "Convention center" means any structure expressly designed and constructed for the

purposes of presenting conventions, public meetings, and exhibitions and includes parking facilities that serve the center and any personal property used in connection with any such structure or facilities.

(3) "Eligible county" means a county having a population of at least four hundred thousand but not more than eight hundred thousand according to the 2000 federal decennial census and that directly borders the geographic boundaries of another state.

(4) "Entity" means a nonprofit corporation, a municipal corporation, a port authority created under Chapter 4582. of the Revised Code, or a convention facilities authority created under Chapter 351. of the Revised Code.

(5) "Lodging taxes" means excise taxes levied under division (A)~~(1)~~, ~~(A)~~(2)(B), or ~~(C)~~ (M) of section 5739.09 of the Revised Code and the revenues arising therefrom.

(6) "Nonprofit corporation" means a nonprofit corporation that is organized under the laws of this state and that includes within the purposes for which it is incorporated the authorization to lease and operate facilities such as a convention center or an arena or a combination of an arena and convention center.

(7) "Project" means acquiring, constructing, reconstructing, renovating, rehabilitating, expanding, adding to, equipping, furnishing or otherwise improving an arena, a convention center, or a combination of an arena and convention center. For purposes of this section, a project is a permanent improvement for one purpose under Chapter 133. of the Revised Code.

(8) "Project revenues" means money received by a county with a population greater than four hundred thousand wherein the population of the largest city comprises more than one-third of that county's population, other than money from taxes or from the proceeds of securities secured by taxes, in connection with, derived from, related to, or resulting from a project, including, but not limited to, rentals and other payments received under a lease or agreement with respect to the project, ticket charges or surcharges for admission to events at a project, charges or surcharges for parking for events at a project, charges for the use of a project or any portion of a project, including suites and seating rights, the sale of naming rights for the project or a portion of the project, unexpended proceeds of any county revenue bonds issued for the project, and any income and profit from the investment of the proceeds of any such revenue bonds or any project revenues.

(9) "Chapter 133. securities," "debt charges," "general obligation," "legislation," "one purpose," "outstanding," "permanent improvement," "person," and "securities" have the meanings given to those terms in section 133.01 of the Revised Code.

(B) A board of county commissioners may enter into an agreement with a convention and visitors' bureau operating in the county under which:

(1) The bureau agrees to construct and equip a convention center in the county and to pledge and contribute from the tax revenues received by it under division (A) of section 5739.09 of the Revised Code, not more than such portion thereof that it is authorized to pledge and contribute for the purpose described in division (C) of this section; and

(2) The board agrees to levy a tax under division ~~(C)~~ (M) of section 5739.09 of the Revised Code and pledge and contribute the revenues therefrom for the purpose described in division (C) of this section.

(C) The purpose of the pledges and contributions described in divisions (B)(1) and (2) of this

section is payment of principal, interest, and premium, if any, on bonds and notes issued by or for the benefit of the bureau to finance the construction and equipping of a convention center. The pledges and contributions provided for in the agreement shall be for the period stated in the agreement. Revenues determined from time to time by the board to be needed to cover the real and actual costs of administering the tax imposed ~~by~~ under division ~~(C)~~ (M) of section 5739.09 of the Revised Code may not be pledged or contributed. The agreement shall provide that any such bonds and notes shall be secured by a trust agreement between the bureau or other issuer acting for the benefit of the bureau and a corporate trustee that is a trust company or bank having the powers of a trust company within or without the state, and the trust agreement shall pledge or assign to the retirement of the bonds or notes, all moneys paid by the county under this section. A tax the revenues from which are pledged under an agreement entered into by a board of county commissioners under this section shall not be subject to diminution by initiative or referendum, or diminution by statute, unless provision is made therein for an adequate substitute therefor reasonably satisfactory to the trustee under the trust agreement that secures the bonds and notes.

(D) A pledge of money by a county under division (B) of this section shall not be indebtedness of the county for purposes of Chapter 133. of the Revised Code.

(E) If the terms of the agreement so provide, the board of county commissioners may acquire and lease real property to the convention bureau as the site of the convention center. The lease shall be on such terms as are set forth in the agreement. The purchase and lease are not subject to the limitations of sections 307.02 and 307.09 of the Revised Code.

(F) In addition to the authority granted to a board of county commissioners under divisions (B) to (E) of this section, a board of county commissioners in a county with a population of one million two hundred thousand or more, or a county with a population greater than four hundred thousand wherein the population of the largest city comprises more than one-third of that county's population, may purchase, for cash or by installment payments, enter into lease-purchase agreements for, lease with an option to purchase, lease, construct, enlarge, improve, rebuild, equip, or furnish a convention center.

(G) The board of county commissioners of a county with a population greater than four hundred thousand wherein the population of the largest city comprises more than one-third of that county's population may undertake, finance, operate, and maintain a project. The board may lease a project to an entity on terms that the board determines to be in the best interest of the county and in furtherance of the public purpose of the project; the lease may be for a term of thirty-five years or less and may provide for an option of the entity to renew the lease for a term of thirty-five years or less. The board may enter into an agreement with an entity with respect to a project on terms that the board determines to be in the best interest of the county and in furtherance of the public purpose of the project. To the extent provided for in an agreement or a lease with an entity, the board may authorize the entity to administer on behalf of the board any contracts for the project. The board may enter into an agreement providing for the sale to a person of naming rights to a project or portion of a project, for a period, for consideration, and on other terms and conditions that the board determines to be in the best interest of the county and in furtherance of the public purpose of the project. The board may enter into an agreement with a person owning or operating a professional athletic or sports team providing for the use by that person of a project or portion of a project for that team's offices,

training, practices, and home games for a period, for consideration, and on other terms and conditions that the board determines to be in the best interest of the county and in furtherance of the public purpose of the project. The board may establish ticket charges or surcharges for admission to events at a project, charges or surcharges for parking for events at a project, and charges for the use of a project or any portion of a project, including suites and seating rights, and may, as necessary, enter into agreements related thereto with persons for a period, for consideration, and on other terms and conditions that the board determines to be in the best interest of the county and in furtherance of the public purpose of the project. A lease or agreement authorized by this division is not subject to sections 307.02, 307.09, and 307.12 of the Revised Code.

(H) Notwithstanding any contrary provision in Chapter 5739. of the Revised Code, after adopting a resolution declaring it to be in the best interest of the county to undertake a project as described in division (G) of this section, the board of county commissioners of an eligible county may adopt a resolution enacting or increasing any lodging taxes within the limits specified in Chapter 5739. of the Revised Code with respect to those lodging taxes and amending any prior resolution under which any of its lodging taxes have been imposed in order to provide that those taxes, after deducting the real and actual costs of administering the taxes and any portion of the taxes returned to any municipal corporation or township as provided in division (A)~~(1)~~ of section 5739.09 of the Revised Code, shall be used by the board for the purposes of undertaking, financing, operating, and maintaining the project, including paying debt charges on any securities issued by the board under division (I) of this section, or to make contributions to the convention and visitors' bureau operating within the county, or to promote, advertise, and market the region in which the county is located, all as the board may determine and make appropriations for from time to time, subject to the terms of any pledge to the payment of debt charges on outstanding general obligation securities or special obligation securities authorized under division (I) of this section. A resolution adopted under division (H) of this section shall be adopted not earlier than January 15, 2007, and not later than January 15, 2008.

A resolution adopted under division (H) of this section may direct the board of elections to submit the question of enacting or increasing lodging taxes, as the case may be, to the electors of the county at a special election held on the date specified by the board in the resolution, provided that the election occurs not less than ninety days after a certified copy of the resolution is transmitted to the board of elections and no later than January 15, 2008. A resolution submitted to the electors under this division shall not go into effect unless it is approved by a majority of those voting upon it. A resolution adopted under division (H) of this section that is not submitted to the electors of the county for their approval or disapproval is subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code.

A resolution adopted under division (H) of this section takes effect upon its adoption, unless the resolution is submitted to the electors of the county for their approval or disapproval, in which case the resolution takes effect on the date the board of county commissioners receives notification from the board of elections of the affirmative vote. Lodging taxes received after the effective date of the resolution may be used for the purposes described in division (H) of this section, except that lodging taxes that have been pledged to the payment of debt charges on any bonds or notes issued by or for the benefit of a convention and visitors' bureau under division (C) of this section shall be used

exclusively for that purpose until such time as the bonds or notes are no longer outstanding under the trust agreement securing those bonds or notes.

(I)(1) The board of county commissioners of a county with a population greater than four hundred thousand wherein the population of the largest city comprises more than one-third of that county's population may issue the following securities of the county for the purpose of paying costs of the project, refunding any outstanding county securities issued for that purpose, refunding any outstanding bonds or notes issued by or for the benefit of the bureau under division (C) of this section, or for any combination of those purposes:

(a) General obligation securities issued under Chapter 133. of the Revised Code. The resolution authorizing these securities may include covenants to appropriate annually from lawfully available lodging taxes, and to continue to levy and collect those lodging taxes in, amounts necessary to meet the debt charges on those securities.

(b) Special obligation securities issued under Chapter 133. of the Revised Code that are secured only by lawfully available lodging taxes and any other taxes and revenues pledged to pay the debt charges on those securities, except ad valorem property taxes. The resolution authorizing those securities shall include a pledge of and covenants to appropriate annually from lawfully available lodging taxes and any other taxes and revenues pledged for such purpose, and to continue to collect any of those revenues pledged for such purpose and to levy and collect those lodging taxes and any other taxes pledged for such purpose, in amounts necessary to meet the debt charges on those securities. The pledge is valid and binding from the time the pledge is made, and the lodging taxes so pledged and thereafter received by the county are immediately subject to the lien of the pledge without any physical delivery of the lodging taxes or further act. The lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the county, regardless of whether such parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created or further evidenced is required to be filed or recorded except in the records of the board. The special obligation securities shall contain a statement on their face to the effect that they are not general obligation securities, and, unless paid from other sources, are payable from the pledged lodging taxes.

(c) Revenue securities authorized under section 133.08 of the Revised Code and issued under Chapter 133. of the Revised Code that are secured only by lawfully available project revenues pledged to pay the debt charges on those securities.

(2) The securities described in division (I)(1) of this section are subject to Chapter 133. of the Revised Code.

(3) Section 133.34 of the Revised Code, except for division (A) of that section, applies to the issuance of any refunding securities authorized under this division. In lieu of division (A) of section 133.34 of the Revised Code, the board of county commissioners shall establish the maturity date or dates, the interest payable on, and other terms of refunding securities as it considers necessary or appropriate for their issuance, provided that the final maturity of refunding securities shall not exceed by more than ten years the final maturity of any bonds refunded by refunding securities.

(4) The board may not repeal, rescind, or reduce all or any portion of any lodging taxes pledged to the payment of debt charges on any outstanding special obligation securities authorized under this division, and no portion of any lodging taxes that is pledged, or that the board has

covenanted to levy, collect, and appropriate annually to pay debt charges on any outstanding securities authorized under this division is subject to repeal, rescission, or reduction by the electorate of the county.

Sec. 319.301. (A) The reductions required by division (D) of this section do not apply to any of the following:

(1) Taxes levied at whatever rate is required to produce a specified amount of tax money, including a tax levied under section 5705.199~~, 5705.211,~~ or 5748.09 of the Revised Code, or an amount to pay debt charges;

(2) Taxes levied within the one per cent limitation imposed by Section 2 of Article XII, Ohio Constitution;

(3) Taxes provided for by the charter of a municipal corporation.

(B) As used in this section:

(1) "Real property" includes real property owned by a railroad.

(2) "Carryover property" means all real property on the current year's tax list except:

(a) Land and improvements that were not taxed by the district in both the preceding year and the current year;

(b) Land and improvements that were not in the same class in both the preceding year and the current year.

(3) "Effective tax rate" means with respect to each class of property:

(a) The sum of the total taxes that would have been charged and payable for current expenses against real property in that class if each of the district's taxes were reduced for the current year under division (D)(1) of this section without regard to the application of division (E)(3) of this section divided by

(b) The taxable value of all real property in that class.

(4) "Taxes charged and payable" means the taxes charged and payable prior to any reduction required by section 319.302 of the Revised Code.

(C) The tax commissioner shall make the determinations required by this section each year, without regard to whether a taxing district has territory in a county to which section 5715.24 of the Revised Code applies for that year. Separate determinations shall be made for each of the two classes established pursuant to section 5713.041 of the Revised Code.

(D) With respect to each tax authorized to be levied by each taxing district, the tax commissioner, annually, shall do both of the following:

(1) Determine by what percentage, if any, the sums levied by such tax against the carryover property in each class would have to be reduced for the tax to levy the same number of dollars against such property in that class in the current year as were charged against such property by such tax in the preceding year subsequent to the reduction made under this section but before the reduction made under section 319.302 of the Revised Code. In the case of a tax levied for the first time that is not a renewal of an existing tax, the commissioner shall determine by what percentage the sums that would otherwise be levied by such tax against carryover property in each class would have to be reduced to equal the amount that would have been levied if the full rate thereof had been imposed against the total taxable value of such property in the preceding tax year. A tax or portion of a tax that is designated a replacement levy under section 5705.192 of the Revised Code is not a renewal of an

existing tax for purposes of this division.

(2) Certify each percentage determined in division (D)(1) of this section, as adjusted under division (E) of this section, and the class of property to which that percentage applies to the auditor of each county in which the district has territory. The auditor, after complying with section 319.30 of the Revised Code, shall reduce the sum to be levied by such tax against each parcel of real property in the district by the percentage so certified for its class. Certification shall be made by the first day of September except in the case of a tax levied for the first time, in which case certification shall be made within fifteen days of the date the county auditor submits the information necessary to make the required determination.

(E)(1) As used in division (E)(2) of this section, "pre-1982 joint vocational taxes" means, with respect to a class of property, the difference between the following amounts:

(a) The taxes charged and payable in tax year 1981 against the property in that class for the current expenses of the joint vocational school district of which the school district is a part after making all reductions under this section;

(b) ~~The following percentage~~ Two-tenths of one per cent of the taxable value of all real property in that class~~:~~

~~(i) In 1987, five one-hundredths of one per cent;~~

~~(ii) In 1988, one-tenth of one per cent;~~

~~(iii) In 1989, fifteen one-hundredths of one per cent;~~

~~(iv) In 1990 and each subsequent year, two-tenths of one per cent~~.

If the amount in division (E)(1)(b) of this section exceeds the amount in division (E)(1)(a) of this section, the pre-1982 joint vocational taxes shall be zero.

As used in divisions (E)(2) and (3) of this section, "taxes charged and payable" has the same meaning as in division (B)(4) of this section and excludes any tax charged and payable in 1985 or thereafter under sections 5705.194 to 5705.197 or section 5705.199, 5705.213, 5705.219, or 5748.09 of the Revised Code.

(2) If in the case of a school district other than a joint vocational or cooperative education school district any percentage required to be used in division (D)(2) of this section for either class of property could cause the total taxes charged and payable for current expenses to be less than two per cent of the taxable value of all real property in that class that is subject to taxation by the district, the commissioner shall determine what percentages would cause the district's total taxes charged and payable for current expenses against that class, after all reductions that would otherwise be made under this section, to equal, when combined with the pre-1982 joint vocational taxes against that class, the lesser of the following:

(a) The sum of the rates at which those taxes are authorized to be levied;

(b) Two per cent of the taxable value of the property in that class. The auditor shall use such percentages in making the reduction required by this section for that class.

(3)~~(a)~~ If in the case of a joint vocational school district any percentage required to be used in division (D)(2) of this section for either class of property could cause the total taxes charged and payable for current expenses for that class to be less than ~~the designated amount~~two-tenths of one per cent of the taxable value of that class, the commissioner shall determine what percentages would cause the district's total taxes charged and payable for current expenses for that class, after all

reductions that would otherwise be made under this section, to equal ~~the designated~~ that amount. The auditor shall use such percentages in making the reductions required by this section for that class.

~~(b) As used in division (E)(3)(a) of this section, the designated amount shall equal the taxable value of all real property in the class that is subject to taxation by the district times the lesser of the following:~~

~~(i) Two-tenths of one per cent;~~

~~(ii) The district's effective rate plus the following percentage for the year indicated:~~

	1	2
A	~~WHEN COMPUTING THE TAXES CHARGES FOR~~	~~ADD THE FOLLOWING PERCENTAGE:~~
B	~~1987~~	~~0.025%~~
C	~~1988~~	~~0.05%~~
D	~~1989~~	~~0.075%~~
E	~~1990~~	~~0.1%~~
F	~~1991~~	~~0.125%~~
G	~~1992~~	~~0.15%~~
H	~~1993~~	~~0.175%~~
I	~~1994 and thereafter~~	~~0.2%~~

(F) No reduction shall be made under this section in the rate at which any tax is levied.

(G) The commissioner may order a county auditor to furnish any information the commissioner needs to make the determinations required under division (D) or (E) of this section, and the auditor shall supply the information in the form and by the date specified in the order. If the auditor fails to comply with an order issued under this division, except for good cause as determined by the commissioner, the commissioner shall withhold from such county or taxing district therein fifty per cent of state revenues to local governments pursuant to section 5747.50 of the Revised Code or shall direct the department of education to withhold therefrom fifty per cent of state revenues to school districts pursuant to Chapter 3317. of the Revised Code. The commissioner shall withhold the distribution of such revenues until the county auditor has complied with this division, and the department shall withhold the distribution of such revenues until the commissioner has notified the

department that the county auditor has complied with this division.

(H) If the commissioner is unable to certify a tax reduction factor for either class of property in a taxing district located in more than one county by the last day of November because information required under division (G) of this section is unavailable, the commissioner may compute and certify an estimated tax reduction factor for that district for that class. The estimated factor shall be based upon an estimate of the unavailable information. Upon receipt of the actual information for a taxing district that received an estimated tax reduction factor, the commissioner shall compute the actual tax reduction factor and use that factor to compute the taxes that should have been charged and payable against each parcel of property for the year for which the estimated reduction factor was used. The amount by which the estimated factor resulted in an overpayment or underpayment in taxes on any parcel shall be added to or subtracted from the amount due on that parcel in the ensuing tax year.

A percentage or a tax reduction factor determined or computed by the commissioner under this section shall be used solely for the purpose of reducing the sums to be levied by the tax to which it applies for the year for which it was determined or computed. It shall not be used in making any tax computations for any ensuing tax year.

(I) In making the determinations under division (D)(1) of this section, the tax commissioner shall take account of changes in the taxable value of carryover property resulting from complaints filed under section 5715.19 of the Revised Code for determinations made for the tax year in which such changes are reported to the commissioner. Such changes shall be reported to the commissioner on the first abstract of real property filed with the commissioner under section 5715.23 of the Revised Code following the date on which the complaint is finally determined by the board of revision or by a court or other authority with jurisdiction on appeal. The tax commissioner shall account for such changes in making the determinations only for the tax year in which the change in valuation is reported. Such a valuation change shall not be used to recompute the percentages determined under division (D)(1) of this section for any prior tax year.

Sec. 321.03. At the request of the county treasurer, a board of county commissioners may enter into a contract with any financial institution under which the financial institution, in accordance with the terms of the contract, receives at a post office box any type of payment or fee owed or payable to the county, opens the mail delivered to that box, processes the checks and other payments received in such mail and deposits them into the treasurer's account, and provides the county treasurer daily receipt information with respect to such payments. The contract may provide for the financial institution to receive at the post office box those payments and fees specifically named in the contract or all payments and fees payable to the county, including, but not limited to, utility, sewer, water, refuse collection, waste disposal, and airport fees, but in any case excluding taxes. The contract shall not be entered into unless:

(A) There is attached to the contract a certification by the auditor of state that the financial institution and the treasurer have given assurances satisfactory to the auditor of state that the records of the financial institution, to the extent that they relate to payments covered by the contract, shall be subject to examination by the auditor of state to the same extent as if the services that the financial institution has agreed to perform were being performed by the treasurer.

(B) The contract is awarded in accordance with sections 307.86 to 307.92 of the Revised Code.

(C) The treasurer's surety bond includes within its coverage any loss that might occur as the result of the contract.

(D) The provisions of the contract do not conflict with accounting and reporting requirements prescribed by the auditor of state.

Sec. 321.20. On the first day of each month in each year, the county treasurer shall deposit with the county auditor all warrants ~~he~~ the treasurer has ~~redeemded~~ redeemed and take the auditor's receipt for them.

Sec. 323.154. The county auditor shall approve or deny an application for reduction under section 323.152 of the Revised Code and shall so notify the applicant ~~not later than the first Monday in October~~ within thirty days after the application is approved or denied. Notification shall be provided on a form prescribed by the tax commissioner. If the application is approved, upon issuance of the notification the county auditor shall record the amount of reduction in taxes in the appropriate column on the general tax list and duplicate of real and public utility property and on the manufactured home tax list. If the application is denied, the notification shall inform the applicant of the reasons for the denial.

If an applicant believes that the application for reduction has been improperly denied or that the reduction is for less than that to which the applicant is entitled, the applicant may file an appeal with the county board of revision not later than ~~the date of closing of the collection for the first half of real and public utility property taxes or manufactured home taxes~~ sixty days after the notification was issued under this section. The appeal shall be treated in the same manner as a complaint relating to the valuation or assessment of real property under Chapter 5715. of the Revised Code.

Sec. 323.155. The tax bill prescribed under section 323.131 of the Revised Code shall indicate the net amount of taxes due following the reductions in taxes under sections 319.301, 319.302, 323.152, and 323.16 of the Revised Code.

Any reduction in taxes under section 323.152 of the Revised Code shall be disregarded as income or resources in determining eligibility for any program or calculating any payment under Title LI of the Revised Code.

Sec. 351.01. As used in this chapter:

(A) "Convention facilities authority" means a body corporate and politic created pursuant to section 351.02 of the Revised Code.

(B) "Governmental agency" means a department, division, or other unit of the state government or of a municipal corporation, county, township, or other political subdivision of the state; any state university or college, as defined in section 3345.12 of the Revised Code, community college, state community college, university branch, or technical college; any other public corporation or agency having the power to acquire, construct, or operate facilities; the United States or any agency thereof; and any agency, commission, or authority established pursuant to an interstate compact or agreement.

(C) "Person" means any individual, firm, partnership, association, or corporation, or any combination of them.

(D) "Facility" or "facilities" means any convention, entertainment, or sports facility, or combination of them, located within the territory of the convention facilities authority, together with all hotels, parking facilities, walkways, and other auxiliary facilities, real and personal property,

property rights, easements and interests that may be appropriate for, or used in connection with, the operation of the facility.

(E) "Cost" means the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for such acquisition; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office of the convention facilities authority; the cost of diverting highways, interchange of highways, access roads to private property, including the cost of land or easements for such access roads; the cost of public utility and common carrier relocation or duplication; the cost of all machinery, furnishings, and equipment; financing charges; interest prior to and during construction and for no more than eighteen months after completion of construction; expenses of research and development with respect to facilities; legal expenses; expenses of obtaining plans, specifications, engineering surveys, studies, and estimates of cost and revenues; working capital; expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing such facility; administrative expense; and such other expenses as may be necessary or incident to the acquisition or construction of the facility, the financing of such acquisition or construction, including the amount authorized in the resolution of the convention facilities authority providing for the issuance of convention facilities authority revenue bonds to be paid into any special funds from the proceeds of such bonds, the cost of issuing the bonds, and the financing of the placing of such facility in operation. Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, preparation of plans and specifications, and other engineering services, or any other cost described above, in connection with the acquisition or construction of a facility may be regarded as part of the cost of such facility and may be reimbursed out of the proceeds of convention facilities authority revenue bonds as authorized by this chapter.

(F) "Owner" includes a person having any title or interest in any property, rights, easements, or interests authorized to be acquired by Chapter 351. of the Revised Code.

(G) "Revenues" means all rentals and other charges received by the convention facilities authority for the use or services of any facility, the sale of any merchandise, or the operation of any concessions; any gift or grant received with respect to any facility, any moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of a facility or part thereof; moneys received in repayment of and for interest on any loans made by the authority to a person or governmental agency, whether from the United States or any department, administration, or agency thereof, or otherwise; proceeds of convention facilities authority revenue bonds to the extent the use thereof for payment of principal or of premium, if any, or interest on the bonds is authorized by the authority; proceeds from any insurance, appropriation, or guaranty pertaining to a facility or property mortgaged to secure bonds or pertaining to the financing of the facility; income and profit from the investment of the proceeds of convention facilities authority revenue bonds or of any revenues; contributions of the proceeds of a tax levied pursuant to division ~~(A)(3)~~ (C) of section 5739.09 of the Revised Code; and moneys transmitted to the authority pursuant to division (B) of section 5739.211 and division (B) of section 5741.031 of the Revised Code.

(H) "Public roads" includes all public highways, roads, and streets in the state, whether maintained by the state, county, city, township, or other political subdivision.

(I) "Construction," unless the context indicates a different meaning or intent, includes, but is not limited to, reconstruction, enlargement, improvement, or providing fixtures, furnishings, and equipment.

(J) "Convention facilities authority revenue bonds" or "revenue bonds," unless the context indicates a different meaning or intent, includes convention facilities authority revenue notes, convention facilities authority revenue renewal notes, and convention facilities authority revenue refunding bonds.

(K) "Convention facilities authority tax anticipation bonds" or "tax anticipation bonds," unless the context indicates a different meaning, includes convention facilities authority tax anticipation bonds, tax anticipation notes, tax anticipation renewal notes, and tax anticipation refunding bonds.

(L) "Bonds and notes" means convention facilities authority revenue bonds and convention facilities authority tax anticipation bonds.

(M) "Territory of the authority" means all of the area of the county creating the convention facilities authority.

(N) "Excise taxes" means any of the taxes levied pursuant to division (B) or (C) of section 351.021 of the Revised Code. "Excise taxes" does not include taxes levied pursuant to section 4301.424, 5743.026, or 5743.324 of the Revised Code.

(O) "Transaction" means the charge by a hotel for each occupancy by transient guests of a room or suite of rooms used in a hotel as a single unit for any period of twenty-four hours or less.

(P) "Hotel" and "transient guests" have the same meanings as in section 5739.01 of the Revised Code.

(Q) "Sports facility" means a facility intended to house major league professional athletic teams.

(R) "Constructing" or "construction" includes providing fixtures, furnishings, and equipment.

Sec. 351.03. (A) Except as provided in division ~~(A)(3)~~ (C) of section 5739.09 or in section 5739.026 of the Revised Code, no county creating a convention facilities authority may appropriate and expend public funds to finance or subsidize the operation of the authority.

(B) Subject to making due provisions for payment and performance of its obligations, a convention facilities authority may be dissolved by the county creating it. In such event the properties of the authority shall be transferred to the county creating it, and the county may thereupon appropriate and expend public funds to finance or subsidize the operation of such facilities.

Sec. 351.141. A convention facilities authority that levies any of the excise taxes authorized by division (B) or (C) of section 351.021 of the Revised Code or that receives contributions pursuant to division ~~(A)(3)~~ (C) of section 5739.09 of the Revised Code, by resolution may anticipate the proceeds of the levy and issue convention facilities authority tax anticipation bonds, and notes anticipating the proceeds or the bonds, in the principal amount that, in the opinion of the authority, are necessary for the purpose of paying the cost of one or more facilities or parts of one or more facilities, and as able, with the interest on them, be paid over the term of the issue, or in the case of notes anticipating bonds over the term of the bonds, by the estimated amount of the excise taxes or contributions anticipated thereby. The excise taxes or contributions are determined by the general assembly to satisfy any applicable requirement of Section 11 of Article XII, Ohio Constitution. An

authority, at any time, may issue renewal tax anticipation notes, issue tax anticipation bonds to pay such notes, and, whenever it considers refunding expedient, refund any tax anticipation bonds by the issuance of tax anticipation refunding bonds whether the bonds to be refunded have or have not matured, and issue tax anticipation bonds partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds shall be sold and the proceeds needed for such purpose applied in the manner provided in the bond proceedings to the purchase, redemption, or payment of the bonds to be refunded.

Every issue of outstanding tax anticipation bonds shall be payable out of the proceeds of the excise taxes or contributions anticipated and other revenues of the authority that are pledged for such payment. The pledge shall be valid and binding from the time the pledge is made, and the anticipated excise taxes, contributions, and revenues so pledged and thereafter received by the authority immediately shall be subject to the lien of that pledge without any physical delivery of those excise taxes, contributions, and revenues or further act. The lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, whether or not such parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the authority's records.

Whether or not the bonds or notes are of such form and character as to be negotiable instruments under Title XIII of the Revised Code, the bonds or notes shall have all the qualities and incidents of negotiable instruments, subject only to their provisions for registration, if any.

The tax anticipation bonds shall bear such date or dates, and shall mature at such time or times, in the case of any such notes or any renewals of such notes not exceeding twenty years from the date of issue of such original notes and in the case of any such bonds or any refunding bonds not exceeding forty years from the date of the original issue of notes or bonds for the purpose, and shall be executed in the manner that the resolution authorizing the bonds may provide. The tax anticipation bonds shall bear interest at such rates, or at variable rate or rates changing from time to time, in accordance with provisions provided in the authorizing resolution, be in such denominations and form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, as the authority may authorize or provide. The tax anticipation bonds may be sold at public or private sale, and at, or at not less than the price or prices as the authority determines. If any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before delivery of the bonds, the signature or facsimile shall nevertheless be sufficient for all purposes as if the officer had remained in office until delivery of the bonds, and in case the seal of the authority has been changed after a facsimile has been imprinted on the bonds, the facsimile seal will continue to be sufficient for all purposes.

Any resolution or resolutions authorizing any tax anticipation bonds or any issue of tax anticipation bonds may contain provisions, subject to any agreements with bondholders as may then exist, which provisions shall be a part of the contract with the holders of the bonds, as to the pledging of any or all of the authority's anticipated excise taxes, contributions, and revenues to secure the payment of the bonds or of any issue of the bonds; the use and disposition of revenues of the authority; the crediting of the proceeds of the sale of bonds to and among the funds referred to or provided for in the resolution; limitations on the purpose to which the proceeds of sale of the bonds

may be applied and the pledging of portions of such proceeds to secure the payment of the bonds or of any issue of the bonds; as to notes issued in anticipation of the issuance of bonds, the agreement of the authority to do all things necessary for the authorization, issuance, and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds; the procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; securing any bonds by a trust agreement in accordance with section 351.16 of the Revised Code; any other matters, of like or different character, that in any way affect the security or protection of the bonds. The excise taxes anticipated by the bonds, including bonds anticipated by notes, shall not be subject to diminution by initiative or referendum or by law while the bonds or notes remain outstanding in accordance with their terms, unless provision is made by law or by the authority for an adequate substitute therefor reasonably satisfactory to the trustee, if a trust agreement secures the bonds.

Neither the members of the board of directors of the authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Sec. 718.01. Any term used in this chapter that is not otherwise defined in this chapter has the same meaning as when used in a comparable context in laws of the United States relating to federal income taxation or in Title LVII of the Revised Code, unless a different meaning is clearly required. Except as provided in section 718.81 of the Revised Code, if a term used in this chapter that is not otherwise defined in this chapter is used in a comparable context in both the laws of the United States relating to federal income tax and in Title LVII of the Revised Code and the use is not consistent, then the use of the term in the laws of the United States relating to federal income tax shall control over the use of the term in Title LVII of the Revised Code.

Except as otherwise provided in section 718.81 of the Revised Code, as used in this chapter:

(A)(1) "Municipal taxable income" means the following:

(a) For a person other than an individual, income apportioned or situsedto the municipal corporation under section 718.02 of the Revised Code, as applicable, reduced by any pre-2017 net operating loss carryforward available to the person for the municipal corporation.

(b)(i) For an individual who is a resident of a municipal corporation other than a qualified municipal corporation, income reduced by exempt income to the extent otherwise included in income, then reduced as provided in division (A)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

(ii) For an individual who is a resident of a qualified municipal corporation, Ohio adjusted gross income reduced by income exempted, and increased by deductions excluded, by the qualified municipal corporation from the qualified municipal corporation's tax. If a qualified municipal corporation, on or before December 31, 2013, exempts income earned by individuals who are not residents of the qualified municipal corporation and net profit of persons that are not wholly located within the qualified municipal corporation, such individual or person shall have no municipal taxable income for the purposes of the tax levied by the qualified municipal corporation and may be exempted by the qualified municipal corporation from the requirements of section 718.03 of the

Revised Code.

(c) For an individual who is a nonresident of a municipal corporation, income reduced by exempt income to the extent otherwise included in income and then, as applicable, apportioned or situsedto the municipal corporation under section 718.02 of the Revised Code, then reduced as provided in division (A)(2) of this section, and further reduced by any pre-2017 net operating loss carryforward available to the individual for the municipal corporation.

(2) In computing the municipal taxable income of a taxpayer who is an individual, the taxpayer may subtract, as provided in division (A)(1)(b)(i) or (c) of this section, the amount of the individual's employee business expenses reported on the individual's form 2106 that the individual deducted for federal income tax purposes for the taxable year, subject to the limitation imposed by section 67 of the Internal Revenue Code. For the municipal corporation in which the taxpayer is a resident, the taxpayer may deduct all such expenses allowed for federal income tax purposes. For a municipal corporation in which the taxpayer is not a resident, the taxpayer may deduct such expenses only to the extent the expenses are related to the taxpayer's performance of personal services in that nonresident municipal corporation.

(B) "Income" means the following:

(1)(a) For residents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the resident, including the resident's distributive share of the net profit of pass-through entities owned directly or indirectly by the resident and any net profit of the resident, except as provided in division (D)(5) of this section.

(b) For the purposes of division (B)(1)(a) of this section:

(i) Any net operating loss of the resident incurred in the taxable year and the resident's distributive share of any net operating loss generated in the same taxable year and attributable to the resident's ownership interest in a pass-through entity shall be allowed as a deduction, for that taxable year and the following five taxable years, against any other net profit of the resident or the resident's distributive share of any net profit attributable to the resident's ownership interest in a pass-through entity until fully utilized, subject to division (B)(1)(d) of this section;

(ii) The resident's distributive share of the net profit of each pass-through entity owned directly or indirectly by the resident shall be calculated without regard to any net operating loss that is carried forward by that entity from a prior taxable year and applied to reduce the entity's net profit for the current taxable year.

(c) Division (B)(1)(b) of this section does not apply with respect to any net profit or net operating loss attributable to an ownership interest in an S corporation unless shareholders' distributive shares of net profits from S corporations are subject to tax in the municipal corporation as provided in division (C)(14)(b) or (c) of this section.

(d) Any amount of a net operating loss used to reduce a taxpayer's net profit for a taxable year shall reduce the amount of net operating loss that may be carried forward to any subsequent year for use by that taxpayer. In no event shall the cumulative deductions for all taxable years with respect to a taxpayer's net operating loss exceed the original amount of that net operating loss available to that taxpayer.

(2) In the case of nonresidents, all income, salaries, qualifying wages, commissions, and other compensation from whatever source earned or received by the nonresident for work done,

services performed or rendered, or activities conducted in the municipal corporation, including any net profit of the nonresident, but excluding the nonresident's distributive share of the net profit or loss of only pass-through entities owned directly or indirectly by the nonresident.

(3) For taxpayers that are not individuals, net profit of the taxpayer;

(4) Lottery, sweepstakes, gambling and sports winnings, winnings from games of chance, and prizes and awards. If the taxpayer is a professional gambler for federal income tax purposes, the taxpayer may deduct related wagering losses and expenses to the extent authorized under the Internal Revenue Code and claimed against such winnings.

(C) "Exempt income" means all of the following:

(1) The military pay or allowances of members of the armed forces of the United States or members of their reserve components, including the national guard of any state;

(2)(a) Except as provided in division (C)(2)(b) of this section, intangible income;

(b) A municipal corporation that taxed any type of intangible income on March 29, 1988, pursuant to Section 3 of S.B. 238 of the 116th general assembly, may continue to tax that type of income if a majority of the electors of the municipal corporation voting on the question of whether to permit the taxation of that type of intangible income after 1988 voted in favor thereof at an election held on November 8, 1988.

(3) Social security benefits, railroad retirement benefits, unemployment compensation, pensions, retirement benefit payments, payments from annuities, and similar payments made to an employee or to the beneficiary of an employee under a retirement program or plan, disability payments received from private industry or local, state, or federal governments or from charitable, religious or educational organizations, and the proceeds of sickness, accident, or liability insurance policies. As used in division (C)(3) of this section, "unemployment compensation" does not include supplemental unemployment compensation described in section 3402(o)(2) of the Internal Revenue Code.

(4) The income of religious, fraternal, charitable, scientific, literary, or educational institutions to the extent such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.

(5) Compensation paid under section 3501.28 or 3501.36 of the Revised Code to a person serving as a precinct election official to the extent that such compensation does not exceed one thousand dollars for the taxable year. Such compensation in excess of one thousand dollars for the taxable year may be subject to taxation by a municipal corporation. A municipal corporation shall not require the payer of such compensation to withhold any tax from that compensation.

(6) Dues, contributions, and similar payments received by charitable, religious, educational, or literary organizations or labor unions, lodges, and similar organizations;

(7) Alimony and child support received;

(8) Compensation for personal injuries or for damages to property from insurance proceeds or otherwise, excluding compensation paid for lost salaries or wages or compensation from punitive damages;

(9) Income of a public utility when that public utility is subject to the tax levied under section 5727.24 or 5727.30 of the Revised Code. Division (C)(9) of this section does not apply for purposes of Chapter 5745. of the Revised Code.

(10) Gains from involuntary conversions, interest on federal obligations, items of income subject to a tax levied by the state and that a municipal corporation is specifically prohibited by law from taxing, and income of a decedent's estate during the period of administration except such income from the operation of a trade or business;

(11) Compensation or allowances excluded from federal gross income under section 107 of the Internal Revenue Code;

(12) Employee compensation that is not qualifying wages as defined in division (R) of this section;

(13) Compensation paid to a person employed within the boundaries of a United States air force base under the jurisdiction of the United States air force that is used for the housing of members of the United States air force and is a center for air force operations, unless the person is subject to taxation because of residence or domicile. If the compensation is subject to taxation because of residence or domicile, tax on such income shall be payable only to the municipal corporation of residence or domicile.

(14)(a) Except as provided in division (C)(14)(b) or (c) of this section, an S corporation shareholder's distributive share of net profits of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.

(b) If, pursuant to division (H) of former section 718.01 of the Revised Code as it existed before March 11, 2004, a majority of the electors of a municipal corporation voted in favor of the question at an election held on November 4, 2003, the municipal corporation may continue after 2002 to tax an S corporation shareholder's distributive share of net profits of an S corporation.

(c) If, on December 6, 2002, a municipal corporation was imposing, assessing, and collecting a tax on an S corporation shareholder's distributive share of net profits of the S corporation to the extent the distributive share would be allocated or apportioned to this state under divisions (B)(1) and (2) of section 5733.05 of the Revised Code if the S corporation were a corporation subject to taxes imposed under Chapter 5733. of the Revised Code, the municipal corporation may continue to impose the tax on such distributive shares to the extent such shares would be so allocated or apportioned to this state only until December 31, 2004, unless a majority of the electors of the municipal corporation voting on the question of continuing to tax such shares after that date voted in favor of that question at an election held November 2, 2004. If a majority of those electors voted in favor of the question, the municipal corporation may continue after December 31, 2004, to impose the tax on such distributive shares only to the extent such shares would be so allocated or apportioned to this state.

(d) A municipal corporation shall be deemed to have elected to tax S corporation shareholders' distributive shares of net profits of the S corporation in the hands of the shareholders if a majority of the electors of a municipal corporation voted in favor of a question at an election held under division (C)(14)(b) or (c) of this section. The municipal corporation shall specify by resolution or ordinance that the tax applies to the distributive share of a shareholder of an S corporation in the hands of the shareholder of the S corporation.

(15) To the extent authorized under a resolution or ordinance adopted by a municipal

corporation before January 1, 2016, all or a portion of the income of individuals or a class of individuals under eighteen years of age.

(16)(a) Except as provided in divisions (C)(16)(b), (c), and (d) of this section, qualifying wages described in division (B)(1) or (E) of section 718.011 of the Revised Code to the extent the qualifying wages are not subject to withholding for the municipal corporation under either of those divisions.

(b) The exemption provided in division (C)(16)(a) of this section does not apply with respect to the municipal corporation in which the employee resided at the time the employee earned the qualifying wages.

(c) The exemption provided in division (C)(16)(a) of this section does not apply to qualifying wages that an employer elects to withhold under division (D)(2) of section 718.011 of the Revised Code.

(d) The exemption provided in division (C)(16)(a) of this section does not apply to qualifying wages if both of the following conditions apply:

(i) For qualifying wages described in division (B)(1) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employee's principal place of work is situated, or, for qualifying wages described in division (E) of section 718.011 of the Revised Code, the employee's employer withholds and remits tax on the qualifying wages to the municipal corporation in which the employer's fixed location is located;

(ii) The employee receives a refund of the tax described in division (C)(16)(d)(i) of this section on the basis of the employee not performing services in that municipal corporation.

(17)(a) Except as provided in division (C)(17)(b) or (c) of this section, compensation that is not qualifying wages paid to a nonresident individual for personal services performed in the municipal corporation on not more than twenty days in a taxable year.

(b) The exemption provided in division (C)(17)(a) of this section does not apply under either of the following circumstances:

(i) The individual's base of operation is located in the municipal corporation.

(ii) The individual is a professional athlete, professional entertainer, or public figure, and the compensation is paid for the performance of services in the individual's capacity as a professional athlete, professional entertainer, or public figure. For purposes of division (C)(17)(b)(ii) of this section, "professional athlete," "professional entertainer," and "public figure" have the same meanings as in section 718.011 of the Revised Code.

(c) Compensation to which division (C)(17) of this section applies shall be treated as earned or received at the individual's base of operation. If the individual does not have a base of operation, the compensation shall be treated as earned or received where the individual is domiciled.

(d) For purposes of division (C)(17) of this section, "base of operation" means the location where an individual owns or rents an office, storefront, or similar facility to which the individual regularly reports and at which the individual regularly performs personal services for compensation.

(18) Compensation paid to a person for personal services performed for a political subdivision on property owned by the political subdivision, regardless of whether the compensation is received by an employee of the subdivision or another person performing services for the

subdivision under a contract with the subdivision, if the property on which services are performed is annexed to a municipal corporation pursuant to section 709.023 of the Revised Code on or after March 27, 2013, unless the person is subject to such taxation because of residence. If the compensation is subject to taxation because of residence, municipal income tax shall be payable only to the municipal corporation of residence.

(19) In the case of a tax administered, collected, and enforced by a municipal corporation pursuant to an agreement with the board of directors of a joint economic development district under section 715.72 of the Revised Code, the net profits of a business, and the income of the employees of that business, exempted from the tax under division (Q) of that section.

(20) All of the following:

(a) Income derived from disaster work conducted in this state by an out-of-state disaster business during a disaster response period pursuant to a qualifying solicitation received by the business;

(b) Income of a qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(c) Income of a qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code, to the extent such income is derived from disaster work conducted in this state by the employee during a disaster response period on critical infrastructure owned or used by the employee's employer.

(21) Income the taxation of which is prohibited by the constitution or laws of the United States.

Any item of income that is exempt income of a pass-through entity under division (C) of this section is exempt income of each owner of the pass-through entity to the extent of that owner's distributive or proportionate share of that item of the entity's income.

(D)(1) "Net profit" for a person who is an individual means the individual's net profit required to be reported on schedule C, schedule E, or schedule F reduced by any net operating loss carried forward. For the purposes of division (D)(1) of this section, the net operating loss carried forward shall be calculated and deducted in the same manner as provided in division (D)(3) of this section.

(2) "Net profit" for a person other than an individual means adjusted federal taxable income reduced by any net operating loss incurred by the person in a taxable year beginning on or after January 1, 2017, subject to the limitations of division (D)(3) of this section.

(3)(a) The amount of such net operating loss shall be deducted from net profit to the extent necessary to reduce municipal taxable income to zero, with any remaining unused portion of the net operating loss carried forward to not more than five consecutive taxable years following the taxable year in which the loss was incurred, but in no case for more years than necessary for the deduction to be fully utilized.

(b) No person shall use the deduction allowed by division (D)(3) of this section to offset qualifying wages.

(c)(i) For taxable years beginning in 2018, 2019, 2020, 2021, or 2022, a person may not

deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, more than fifty per cent of the amount of the deduction otherwise allowed by division (D)(3) of this section.

(ii) For taxable years beginning in 2023 or thereafter, a person may deduct, for purposes of an income tax levied by a municipal corporation that levies an income tax before January 1, 2016, the full amount allowed by division (D)(3) of this section without regard to the limitation of division (D)(3)(b)(i) of this section.

(d) Any pre-2017 net operating loss carryforward deduction that is available may be utilized before a taxpayer may deduct any amount pursuant to division (D)(3) of this section.

(e) Nothing in division (D)(3)(c)(i) of this section precludes a person from carrying forward, for use with respect to any return filed for a taxable year beginning after 2018, any amount of net operating loss that was not fully utilized by operation of division (D)(3)(c)(i) of this section. To the extent that an amount of net operating loss that was not fully utilized in one or more taxable years by operation of division (D)(3)(c)(i) of this section is carried forward for use with respect to a return filed for a taxable year beginning in 2019, 2020, 2021, or 2022, the limitation described in division (D)(3)(c)(i) of this section shall apply to the amount carried forward.

(4) For the purposes of this chapter, and notwithstanding division (D)(2) of this section, net profit of a disregarded entity shall not be taxable as against that disregarded entity, but shall instead be included in the net profit of the owner of the disregarded entity.

(5) For the purposes of this chapter, and notwithstanding any other provision of this chapter, the net profit of a publicly traded partnership that makes the election described in division (D)(5) of this section shall be taxed as if the partnership were a C corporation, and shall not be treated as the net profit or income of any owner of the partnership.

A publicly traded partnership that is treated as a partnership for federal income tax purposes and that is subject to tax on its net profits in one or more municipal corporations in this state may elect to be treated as a C corporation for municipal income tax purposes. The publicly traded partnership shall make the election in every municipal corporation in which the partnership is subject to taxation on its net profits. The election shall be made on the annual tax return filed in each such municipal corporation. The publicly traded partnership shall not be required to file the election with any municipal corporation in which the partnership is not subject to taxation on its net profits, but division (D)(5) of this section applies to all municipal corporations in which an individual owner of the partnership resides.

(E) "Adjusted federal taxable income," for a person required to file as a C corporation, or for a person that has elected to be taxed as a C corporation under division (D)(5) of this section, means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(1) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

(2) Add an amount equal to five per cent of intangible income deducted under division (E)(1) of this section, but excluding that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;

(3) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(4)(a) Except as provided in division (E)(4)(b) of this section, deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code;

(b) Division (E)(4)(a) of this section does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code.

(5) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;

(6) In the case of a real estate investment trust or regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors and allowed as a deduction in the computation of federal taxable income;

(7) Deduct, to the extent not otherwise deducted or excluded in computing federal taxable income, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code;

(8) Deduct exempt income to the extent not otherwise deducted or excluded in computing adjusted federal taxable income.

(9) Deduct any net profit of a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that net profit in the group's federal taxable income in accordance with division (E)(3)(b) of section 718.06 of the Revised Code.

(10) Add any loss incurred by a pass-through entity owned directly or indirectly by the taxpayer and included in the taxpayer's federal taxable income unless an affiliated group of corporations includes that loss in the group's federal taxable income in accordance with division (E)(3)(b) of section 718.06 of the Revised Code.

If the taxpayer is not a C corporation, is not a disregarded entity that has made the election described in division (L)(2) of this section, is not a publicly traded partnership that has made the election described in division (D)(5) of this section, and is not an individual, the taxpayer shall compute adjusted federal taxable income under this section as if the taxpayer were a C corporation, except guaranteed payments and other similar amounts paid or accrued to a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deductible expense unless such payments are in consideration for the use of capital and treated as payment of interest under section 469 of the Internal Revenue Code or United States treasury regulations. Amounts paid or accrued to a qualified self-employed retirement plan with respect to a partner, former partner, shareholder, former shareholder, member, or former member of the taxpayer, amounts paid or accrued to or for health insurance for a partner, former partner, shareholder, former shareholder, member, or former member, and amounts paid or accrued to or for life insurance for a partner, former partner, shareholder, former shareholder, member, or former member shall not be allowed as a deduction.

Nothing in division (E) of this section shall be construed as allowing the taxpayer to add or

deduct any amount more than once or shall be construed as allowing any taxpayer to deduct any amount paid to or accrued for purposes of federal self-employment tax.

(F) "Schedule C" means internal revenue service schedule C (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(G) "Schedule E" means internal revenue service schedule E (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(H) "Schedule F" means internal revenue service schedule F (form 1040) filed by a taxpayer pursuant to the Internal Revenue Code.

(I) "Internal Revenue Code" has the same meaning as in section 5747.01 of the Revised Code.

(J) "Resident" means an individual who is domiciled in the municipal corporation as determined under section 718.012 of the Revised Code.

(K) "Nonresident" means an individual that is not a resident.

(L)(1) "Taxpayer" means a person subject to a tax levied on income by a municipal corporation in accordance with this chapter. "Taxpayer" does not include a grantor trust or, except as provided in division (L)(2)(a) of this section, a disregarded entity.

(2)(a) A single member limited liability company that is a disregarded entity for federal tax purposes may be a separate taxpayer from its single member in all Ohio municipal corporations in which it either filed as a separate taxpayer or did not file for its taxable year ending in 2003, if all of the following conditions are met:

(i) The limited liability company's single member is also a limited liability company.

(ii) The limited liability company and its single member were formed and doing business in one or more Ohio municipal corporations for at least five years before January 1, 2004.

(iii) Not later than December 31, 2004, the limited liability company and its single member each made an election to be treated as a separate taxpayer under division (L) of this section as this section existed on December 31, 2004.

(iv) The limited liability company was not formed for the purpose of evading or reducing Ohio municipal corporation income tax liability of the limited liability company or its single member.

(v) The Ohio municipal corporation that was the primary place of business of the sole member of the limited liability company consented to the election.

(b) For purposes of division (L)(2)(a)(v) of this section, a municipal corporation was the primary place of business of a limited liability company if, for the limited liability company's taxable year ending in 2003, its income tax liability was greater in that municipal corporation than in any other municipal corporation in Ohio, and that tax liability to that municipal corporation for its taxable year ending in 2003 was at least four hundred thousand dollars.

(M) "Person" includes individuals, firms, companies, joint stock companies, business trusts, estates, trusts, partnerships, limited liability partnerships, limited liability companies, associations, C corporations, S corporations, governmental entities, and any other entity.

(N) "Pass-through entity" means a partnership not treated as an association taxable as a C corporation for federal income tax purposes, a limited liability company not treated as an association taxable as a C corporation for federal income tax purposes, an S corporation, or any other class of entity from which the income or profits of the entity are given pass-through treatment for federal

income tax purposes. "Pass-through entity" does not include a trust, estate, grantor of a grantor trust, or disregarded entity.

(O) "S corporation" means a person that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(P) "Single member limited liability company" means a limited liability company that has one direct member.

(Q) "Limited liability company" means a limited liability company formed under Chapter 1705. of the Revised Code or under the laws of another state.

(R) "Qualifying wages" means wages, as defined in section 3121(a) of the Internal Revenue Code, without regard to any wage limitations, adjusted as follows:

(1) Deduct the following amounts:

(a) Any amount included in wages if the amount constitutes compensation attributable to a plan or program described in section 125 of the Internal Revenue Code.

(b) Any amount included in wages if the amount constitutes payment on account of a disability related to sickness or an accident paid by a party unrelated to the employer, agent of an employer, or other payer.

(c) Any amount attributable to a nonqualified deferred compensation plan or program described in section 3121(v)(2)(C) of the Internal Revenue Code if the compensation is included in wages and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.

(d) Any amount included in wages if the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has, by resolution or ordinance adopted before January 1, 2016, exempted the amount from withholding and tax.

(e) Any amount included in wages that is exempt income.

(2) Add the following amounts:

(a) Any amount not included in wages solely because the employee was employed by the employer before April 1, 1986.

(b) Any amount not included in wages because the amount arises from the sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option and the municipal corporation has not, by resolution or ordinance, exempted the amount from withholding and tax adopted before January 1, 2016. Division (R)(2)(b) of this section applies only to those amounts constituting ordinary income.

(c) Any amount not included in wages if the amount is an amount described in section 401(k), 403(b), or 457 of the Internal Revenue Code. Division (R)(2)(c) of this section applies only to employee contributions and employee deferrals.

(d) Any amount that is supplemental unemployment compensation benefits described in section 3402(o)(2) of the Internal Revenue Code and not included in wages.

(e) Any amount received that is treated as self-employment income for federal tax purposes in accordance with section 1402(a)(8) of the Internal Revenue Code.

(f) Any amount not included in wages if all of the following apply:

(i) For the taxable year the amount is employee compensation that is earned outside of the

United States and that either is included in the taxpayer's gross income for federal income tax purposes or would have been included in the taxpayer's gross income for such purposes if the taxpayer did not elect to exclude the income under section 911 of the Internal Revenue Code;

(ii) For no preceding taxable year did the amount constitute wages as defined in section 3121(a) of the Internal Revenue Code;

(iii) For no succeeding taxable year will the amount constitute wages; and

(iv) For any taxable year the amount has not otherwise been added to wages pursuant to either division (R)(2) of this section or section 718.03 of the Revised Code, as that section existed before the effective date of H.B. 5 of the 130th general assembly, March 23, 2015.

(S) "Intangible income" means income of any of the following types: income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701. of the Revised Code, and patents, copyrights, trademarks, tradenames, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings, gambling winnings, or other similar games of chance.

(T) "Taxable year" means the corresponding tax reporting period as prescribed for the taxpayer under the Internal Revenue Code.

(U) "Tax administrator" means the individual charged with direct responsibility for administration of an income tax levied by a municipal corporation in accordance with this chapter, and also includes the following:

(1) A municipal corporation acting as the agent of another municipal corporation;

(2) A person retained by a municipal corporation to administer a tax levied by the municipal corporation, but only if the municipal corporation does not compensate the person in whole or in part on a contingency basis;

(3) The central collection agency or the regional income tax agency or their successors in interest, or another entity organized to perform functions similar to those performed by the central collection agency and the regional income tax agency.

"Tax administrator" does not include the tax commissioner.

(V) "Employer" means a person that is an employer for federal income tax purposes.

(W) "Employee" means an individual who is an employee for federal income tax purposes.

(X) "Other payer" means any person, other than an individual's employer or the employer's agent, that pays an individual any amount included in the federal gross income of the individual. "Other payer" includes casino operators and video lottery terminal sales agents.

(Y) "Calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

(Z) "Form 2106" means internal revenue service form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(AA) "Municipal corporation" includes a joint economic development district or joint economic development zone that levies an income tax under section 715.691, 715.70, 715.71, or 715.72 of the Revised Code.

(BB) "Disregarded entity" means a single member limited liability company, a qualifying subchapter S subsidiary, or another entity if the company, subsidiary, or entity is a disregarded entity for federal income tax purposes.

(CC) "Generic form" means an electronic or paper form that is not prescribed by a particular municipal corporation and that is designed for reporting taxes withheld by an employer, agent of an employer, or other payer, estimated municipal income taxes, or annual municipal income tax liability or for filing a refund claim.

(DD) "Tax return preparer" means any individual described in section 7701(a)(36) of the Internal Revenue Code and 26 C.F.R. 301.7701-15.

(EE) "Ohio business gateway" means the online computer network system, created under section 125.30 of the Revised Code, that allows persons to electronically file business reply forms with state agencies and includes any successor electronic filing and payment system.

(FF) "Local board of tax review" and "board of tax review" mean the entity created under section 718.11 of the Revised Code.

(GG) "Net operating loss" means a loss incurred by a person in the operation of a trade or business. "Net operating loss" does not include unutilized losses resulting from basis limitations, at-risk limitations, or passive activity loss limitations.

(HH) "Casino operator" and "casino facility" have the same meanings as in section 3772.01 of the Revised Code.

(II) "Video lottery terminal" has the same meaning as in section 3770.21 of the Revised Code.

(JJ) "Video lottery terminal sales agent" means a lottery sales agent licensed under Chapter 3770. of the Revised Code to conduct video lottery terminals on behalf of the state pursuant to section 3770.21 of the Revised Code.

(KK) "Postal service" means the United States postal service.

(LL) "Certified mail," "express mail," "United States mail," "postal service," and similar terms include any delivery service authorized pursuant to section 5703.056 of the Revised Code.

(MM) "Postmark date," "date of postmark," and similar terms include the date recorded and marked in the manner described in division (B)(3) of section 5703.056 of the Revised Code.

(NN) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is either a related entity, a component member as defined in section 1563(b) of the Internal Revenue Code, or a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty per cent" shall be substituted for "5 percent" wherever "5 percent" appears in section 1563(e) of the Internal Revenue Code.

(OO) "Related entity" means any of the following:

(1) An individual stockholder, or a member of the stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder and the members of the stockholder's family own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(2) A stockholder, or a stockholder's partnership, estate, trust, or corporation, if the

stockholder and the stockholder's partnerships, estates, trusts, or corporations own directly, indirectly, beneficially, or constructively, in the aggregate, at least fifty per cent of the value of the taxpayer's outstanding stock;

(3) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under division (OO)(4) of this section, provided the taxpayer owns directly, indirectly, beneficially, or constructively, at least fifty per cent of the value of the corporation's outstanding stock;

(4) The attribution rules described in section 318 of the Internal Revenue Code apply for the purpose of determining whether the ownership requirements in divisions (OO)(1) to (3) of this section have been met.

(PP)(1) "Assessment" means a written finding by the tax administrator that a person has underpaid municipal income tax, or owes penalty and interest, or any combination of tax, penalty, or interest, to the municipal corporation that commences the person's time limitation for making an appeal to the local board of tax review pursuant to section 718.11 of the Revised Code, and has "ASSESSMENT" written in all capital letters at the top of such finding.

(2) "Assessment" does not include an informal notice denying a request for refund issued under division (B)(3) of section 718.19 of the Revised Code, a billing statement notifying a taxpayer of current or past-due balances owed to the municipal corporation, a tax administrator's request for additional information, a notification to the taxpayer of mathematical errors, or a tax administrator's other written correspondence to a person or taxpayer that does not meet the criteria prescribed by division (PP)(1) of this section.

(QQ) "Taxpayers' rights and responsibilities" means the rights provided to taxpayers in sections 718.11, 718.12, 718.19, 718.23, 718.36, 718.37, 718.38, 5717.011, and 5717.03 of the Revised Code and the responsibilities of taxpayers to file, report, withhold, remit, and pay municipal income tax and otherwise comply with Chapter 718. of the Revised Code and resolutions, ordinances, and rules adopted by a municipal corporation for the imposition and administration of a municipal income tax.

(RR) "Qualified municipal corporation" means a municipal corporation that, by resolution or ordinance adopted on or before December 31, 2011, adopted Ohio adjusted gross income, as defined by section 5747.01 of the Revised Code, as the income subject to tax for the purposes of imposing a municipal income tax.

(SS)(1) "Pre-2017 net operating loss carryforward" means any net operating loss incurred in a taxable year beginning before January 1, 2017, to the extent such loss was permitted, by a resolution or ordinance of the municipal corporation that was adopted by the municipal corporation before January 1, 2016, to be carried forward and utilized to offset income or net profit generated in such municipal corporation in future taxable years.

(2) For the purpose of calculating municipal taxable income, any pre-2017 net operating loss carryforward may be carried forward to any taxable year, including taxable years beginning in 2017 or thereafter, for the number of taxable years provided in the resolution or ordinance or until fully utilized, whichever is earlier.

(TT) "Small employer" means any employer that had total revenue of less than five hundred thousand dollars during the preceding taxable year. For purposes of this division, "total revenue"

means receipts of any type or kind, including, but not limited to, sales receipts; payments; rents; profits; gains, dividends, and other investment income; compensation; commissions; premiums; money; property; grants; contributions; donations; gifts; program service revenue; patient service revenue; premiums; fees, including premium fees and service fees; tuition payments; unrelated business revenue; reimbursements; any type of payment from a governmental unit, including grants and other allocations; and any other similar receipts reported for federal income tax purposes or under generally accepted accounting principles. "Small employer" does not include the federal government; any state government, including any state agency or instrumentality; any political subdivision; or any entity treated as a government for financial accounting and reporting purposes.

(UU) "Audit" means the examination of a person or the inspection of the books, records, memoranda, or accounts of a person for the purpose of determining liability for a municipal income tax.

(VV) "Publicly traded partnership" means any partnership, an interest in which is regularly traded on an established securities market. A "publicly traded partnership" may have any number of partners.

(WW) "Tax commissioner" means the tax commissioner appointed under section 121.03 of the Revised Code.

(XX) "Out-of-state disaster business," "qualifying solicitation," "qualifying employee," "disaster work," "critical infrastructure," and "disaster response period" have the same meanings as in section 5703.94 of the Revised Code.

(YY) "Pension" means a retirement benefit plan, regardless of whether the plan satisfies the qualifications described under section 401(a) of the Internal Revenue Code, including amounts that are taxable under the "Federal Insurance Contributions Act," Chapter 21 of the Internal Revenue Code, excluding employee contributions and elective deferrals, and regardless of whether such amounts are paid in the same taxable year in which the amounts are included in the employee's wages, as defined by section 3121(a) of the Internal Revenue Code.

(ZZ) "Retirement benefit plan" means an arrangement whereby an entity provides benefits to individuals either on or after their termination of service because of retirement or disability. "Retirement benefit plan" does not include wage continuation payments, severance payments, or payments made for accrued personal or vacation time.

Sec. 718.021. (A) As used in this section:

(1) "Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

(2)(a) Except as provided in division (A)(2)(b) of this section, "qualifying loss" means the excess, if any, of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan over the total amount of income the taxpayer has recognized for federal income tax purposes for all taxable years on a cumulative basis as compensation with respect to the taxpayer's receipt of money and property attributable to distributions in connection with the nonqualified deferred compensation plan.

(b) If, for one or more taxable years, the taxpayer has not paid to one or more municipal corporations income tax imposed on the entire amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan, then the "qualifying loss" is the

product of the amount resulting from the calculation described in division (A)(2)(a) of this section computed without regard to division (A)(2)(b) of this section and a fraction the numerator of which is the portion of such compensation on which the taxpayer has paid income tax to one or more municipal corporations and the denominator of which is the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan.

(c) With respect to a nonqualified deferred compensation plan, the taxpayer sustains a qualifying loss only in the taxable year in which the taxpayer receives the final distribution of money and property pursuant to that nonqualified deferred compensation plan.

(3) "Qualifying tax rate" means the applicable tax rate for the taxable year for ~~the~~ which the taxpayer paid income tax to a municipal corporation with respect to any portion of the total amount of compensation the payment of which is deferred pursuant to a nonqualified deferred compensation plan. If different tax rates applied for different taxable years, then the "qualifying tax rate" is a weighted average of those different tax rates. The weighted average shall be based upon the tax paid to the municipal corporation each year with respect to the nonqualified deferred compensation plan.

(B)(1) Except as provided in division (D) of this section, a refundable credit shall be allowed against the income tax imposed by a municipal corporation for each qualifying loss sustained by a taxpayer during the taxable year. The amount of the credit shall be equal to the product of the qualifying loss and the qualifying tax rate.

(2) A taxpayer shall claim the credit allowed under this section from each municipal corporation to which the taxpayer paid municipal income tax with respect to the nonqualified deferred compensation plan in one or more taxable years.

(3) If a taxpayer has paid tax to more than one municipal corporation with respect to the nonqualified deferred compensation plan, the amount of the credit that a taxpayer may claim from each municipal corporation shall be calculated on the basis of each municipal corporation's proportionate share of the total municipal corporation income tax paid by the taxpayer to all municipal corporations with respect to the nonqualified deferred compensation plan.

(4) In no case shall the amount of the credit allowed under this section exceed the cumulative income tax that a taxpayer has paid to a municipal corporation for all taxable years with respect to the nonqualified deferred compensation plan.

(C)(1) For purposes of this section, municipal corporation income tax that has been withheld with respect to a nonqualified deferred compensation plan shall be considered to have been paid by the taxpayer with respect to the nonqualified deferred compensation plan.

(2) Any municipal income tax that has been refunded or otherwise credited for the benefit of the taxpayer with respect to a nonqualified deferred compensation plan shall not be considered to have been paid to the municipal corporation by the taxpayer.

(D) The credit allowed under this section is allowed only to the extent the taxpayer's qualifying loss is attributable to:

(1) The insolvency or bankruptcy of the employer who had established the nonqualified deferred compensation plan; or

(2) The employee's failure or inability to satisfy all of the employer's terms and conditions necessary to receive the nonqualified deferred compensation.

Sec. 929.01. As used in this chapter:

(A) "Agricultural production" means commercial aquaculture, algaculture meaning the farming of algae, apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; the growth of timber for a noncommercial purpose if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use; or any combination of such husbandry, production, or growth; and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry, production, or growth.

"Agricultural production" includes conservation practices, provided that the tracts, lots, or parcels of land or portions thereof that are used for conservation practices comprise not more than twenty-five per cent of tracts, lots, or parcels of land that are otherwise devoted exclusively to agricultural use and for which an application is filed under section 929.02 of the Revised Code.

(B) "Withdrawal from an agricultural district" includes the explicit removal of land from an agricultural district, conversion of land in an agricultural district to use for purposes other than agricultural production, and withdrawal of land from a land retirement or conservation program to use for purposes other than agricultural production. Withdrawal from an agricultural district does not include land described in division (A)~~(4)~~ (3) of section 5713.30 of the Revised Code.

(C) "Conservation practice" has the same meaning as in section 5713.30 of the Revised Code.

Sec. 1545.041. (A) Any township park district created pursuant to section 511.18 of the Revised Code that includes park land located outside the township in which the park district was established may be converted under the procedures provided in this section into a park district to be operated and maintained as provided for in this chapter, provided that there is no existing park district created under section 1545.04 of the Revised Code in the county in which the township park district is located. The proposed park district shall include within its boundary all townships and municipal corporations in which lands owned by the township park district seeking conversion are located, and may include any other townships and municipal corporations in the county in which the township park district is located.

(B) Conversion of a township park district into a park district operated and maintained under this chapter shall be initiated by a resolution adopted by the board of park commissioners of the park district. Any resolution initiating a conversion shall include the following:

(1) The name of the township park district seeking conversion;

(2) The name of the proposed park district;

(3) An accurate description of the territory to be included in the proposed district;

(4) An accurate map or plat of the proposed park district. The resolution may also include a proposed tax levy for the operation and maintenance of the proposed park district. If such a tax levy is proposed, the resolution shall specify the annual rate of the tax, expressed in dollars and cents for each one hundred dollars of valuation and in mills for each dollar of valuation, and shall specify the number of consecutive years the levy will be in effect. The annual rate of such a tax may not be higher than the total combined millage of all levies then in effect for the benefit of the township park district named in the resolution.

(C) Upon adoption of the resolution provided for in division (B) of this section, the board of

park commissioners of the township park district seeking conversion under this section shall certify the resolution to the board of elections of the county in which the park district is located no later than four p.m. of the seventy-fifth day before the day of the election at which the question will be voted upon. Upon certification of the resolution to the board, the board of elections shall make the necessary arrangements to submit the question of conversion of the township park into a park district operated and maintained under Chapter 1545. of the Revised Code, to the electors qualified to vote at the next primary or general election who reside in the territory of the proposed park district. The question shall provide for a tax levy if such a levy is specified in the resolution.

(D) The ballot submitted to the electors as provided in division (C) of this section shall contain the following language:

"Shall the _____ (name of the township park district seeking conversion) be converted into a park district to be operated and maintained under Chapter 1545. of the Revised Code under the name of _____ (name of proposed park district), which park district shall include the following townships and municipal corporations:

(Name townships and municipal corporations)

Approval of the proposed conversion will result in the termination of all existing tax levies voted for the benefit of _____ (name of the township park district sought to be converted) and in the levy of a new tax for the operation and maintenance of _____ (name of proposed park district) at a rate not exceeding _____ (number of mills) mills for each one dollar of valuation, which is _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (number of years the millage is to be imposed) years, commencing on the _____ (year) tax duplicate.

For the proposed conversion

Against the proposed conversion "

(E) If the proposed conversion is approved by at least a majority of the electors voting on the proposal, the township park district that seeks conversion shall become a park district subject to Chapter 1545. of the Revised Code effective the first day of January following approval by the voters. The park district shall have the name specified in the resolution, and effective the first day of January following approval by the voters, the following shall occur:

(1) The indebtedness of the former township park district shall be assumed by the new park district;

(2) All rights, assets, properties, and other interests of the former township park district shall become vested in the new park district, including the rights to any tax revenues previously vested in the former township park district; provided, that all tax levies in excess of the ten mill limitation approved for the benefit of the former township park district shall be removed from the tax lists after the February settlement next succeeding the conversion. Any tax levy approved in connection with the conversion shall be certified as provided in section 5705.25 of the Revised Code.

(3) The members of the board of park commissioners of the former township park district shall be the members ~~of the members~~ of the board of park commissioners of the new park district, with all the same powers and duties as if appointed under section 1545.05 of the Revised Code. The term of each such commissioner shall expire on the first day of January of the year following the year in which his term would have expired under section 511.19 of the Revised Code. Thereafter, commissioners shall be appointed pursuant to section 1545.05 of the Revised Code.

Sec. 1545.21. The board of park commissioners, by resolution, may submit to the electors of the park district the question of levying taxes for the use of the district. The resolution shall declare the necessity of levying such taxes, shall specify the purpose for which such taxes shall be used, the annual rate proposed, and the number of consecutive years the rate shall be levied. Such resolution shall be forthwith certified to the board of elections in each county in which any part of such district is located, not later than the ninetieth day before the day of the election, and the question of the levy of taxes as provided in such resolution shall be submitted to the electors of the district at a special election to be held on whichever of the following occurs first:

(A) The day of the next general election;

(B) The first Tuesday after the first Monday in May in any calendar year, except that if a presidential primary election is held in that calendar year, then the day of that election. ~~The~~

The ballot shall set forth the purpose for which the taxes shall be levied, the annual rate of levy, and the number of years of such levy. If the tax is to be placed on the current tax list, the form of the ballot shall state that the tax will be levied in the current tax year and shall indicate the first calendar year the tax will be due. If the resolution of the board of park commissioners provides that an existing levy will be canceled upon the passage of the new levy, the ballot may include a statement that: "an existing levy of ___ mills (stating the original levy millage), having ___ years remaining, will be canceled and replaced upon the passage of this levy." In such case, the ballot may refer to the new levy as a "replacement levy" if the new millage does not exceed the original millage of the levy being canceled or as a "replacement and additional levy" if the new millage exceeds the original millage of the levy being canceled. If a majority of the electors voting upon the question of such levy vote in favor thereof, such taxes shall be levied and shall be in addition to the taxes authorized by section 1545.20 of the Revised Code, and all other taxes authorized by law. The rate submitted to the electors at any one time shall not exceed two mills annually upon each dollar of valuation unless the purpose of the levy includes providing operating revenues for one of Ohio's major metropolitan zoos, as defined in section 4503.74 of the Revised Code, in which case the rate shall not exceed three mills annually upon each dollar of valuation. When a tax levy has been authorized as provided in this section or in section 1545.041 of the Revised Code, the board of park commissioners may issue bonds pursuant to section 133.24 of the Revised Code in anticipation of the collection of such levy, provided that such bonds shall be issued only for the purpose of acquiring and improving lands. Such levy, when collected, shall be applied in payment of the bonds so issued and the interest thereon. The amount of bonds so issued and outstanding at any time shall not exceed one per cent of the total tax valuation in such district. Such bonds shall bear interest at a rate not to exceed the rate determined as provided in section 9.95 of the Revised Code.

Sec. 1711.15. In any county in which there is a duly organized county agricultural society, the board of county commissioners or the county agricultural society itself may purchase or lease, for a

term of not less than twenty years, real estate on which to hold fairs under the management and control of the county agricultural society, and may erect suitable buildings on the real estate and otherwise improve it.

In counties in which there is a county agricultural society that has purchased, or leased for a term of not less than twenty years, real estate as a site on which to hold fairs, or if the title to the site is vested in fee in the county, the board of county commissioners may erect or repair buildings or otherwise improve the site and pay the rental of it, or contribute to or pay any other form of indebtedness of the society, if the director of agriculture has certified to the board that the county agricultural society is complying with all laws and rules governing the operation of county agricultural societies. The board may appropriate from the county's general fund or permanent improvement fund, and may appropriate revenue from a tax levied under division ~~(L)~~ (T) of section 5739.09 of the Revised Code, any amount that it considers necessary for any of those purposes, provided that an appropriation of revenue from that tax may be expended only for the purposes provided in the resolution levying that tax.

Sec. 1711.16. When the control and management of a fairground is in a county agricultural society, and the board of county commissioners has appropriated an amount for the aid of the society as provided in section 1711.15 of the Revised Code, the society, with the consent of the board, may contract for the erection or repair of buildings or otherwise improve the fairground, to the extent that the payment for the improvement is provided by the board.

When the appropriation is made by the board, the county auditor shall place the proceeds in a special fund, designated the "county agricultural society fund," indicating the purpose for which it is available, provided that an appropriation of revenue from a tax levied by the board under division ~~(L)~~ (T) of section 5739.09 of the Revised Code may be expended only for the purposes provided in the resolution levying that tax. On application of the treasurer of the society, the auditor shall issue an order for the amount of the appropriation to the treasurer of the society, if the society has secured the certificate required under section 1711.05 of the Revised Code, on the treasurer's filing with the auditor a bond in double the amount collected, with good and sufficient sureties approved by the auditor, conditioned for the satisfactory paying over and accounting of the funds for the purposes for which they were provided. The funds shall remain in the special fund in which they are placed by the auditor until they are applied for by the treasurer of the society and the bond is given, or until they are expended by the board for the purposes for which the fund was created. If the society ceases to exist or releases the fund as not required for the purposes for which the fund was created, the board may by resolution transfer the fund to the general fund of the county.

Sec. 3316.03. (A) The existence of a fiscal watch shall be declared by the auditor of state. The auditor of state may make a determination on the auditor of state's initiative, or upon receipt of a written request for such a determination, which may be filed by the governor, the superintendent of public instruction, or a majority of the members of the board of education of the school district.

(1) The auditor of state shall declare a school district to be in a state of fiscal watch if the auditor of state determines that both of the following conditions are satisfied with respect to the school district:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds eight per cent of the school district's general fund revenue

for the preceding fiscal year;

(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194, 5705.199, or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (A)(1)(a) of this section will not apply to the district in such next succeeding fiscal year.

(2) The auditor of state shall declare a school district to be in a state of fiscal watch if the auditor of state determines that the school district has outstanding securities issued under division (A)(4) of section 3316.06 of the Revised Code, and its financial planning and supervision commission has been terminated under section 3316.16 of the Revised Code.

(3) The auditor of state shall declare a school district to be in a state of fiscal watch if both of the following conditions are satisfied:

(a) The superintendent of public instruction has reported to the auditor of state that the superintendent has declared the district under section 3316.031 of the Revised Code to be under a fiscal caution, has found that the district has not acted reasonably to eliminate or correct practices or conditions that prompted the declaration, and has determined the declaration of a state of fiscal watch necessary to prevent further fiscal decline;

(b) The auditor of state determines that the decision of the superintendent is reasonable.

If the auditor of state determines that the decision of the superintendent is not reasonable, the auditor of state shall provide the superintendent with a written explanation of that determination.

(4) The auditor of state may declare a school district to be in a state of fiscal watch if all of the following conditions are satisfied:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds two per cent, but does not exceed eight per cent, of the school district's general fund revenue for the preceding fiscal year;

(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194, 5705.199, or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (A)(4)(a) of this section will not apply to the district in the next succeeding fiscal year;

(c) The auditor of state determines that there is no reasonable cause for the deficit or that the declaration of fiscal watch is necessary to prevent further fiscal decline in the district.

(B)(1) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if the auditor of state determines that both of the following conditions are satisfied with respect to the school district:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds fifteen per cent of the school district's general fund revenue for the preceding fiscal year. ~~In determining the amount of an operating deficit under division (B)(1)(a) of this section, the auditor of state shall credit toward the amount of that deficit only the amount that may be borrowed from the spending reserve balance as determined under section 133.301 and division (F) of section 5705.29 of the Revised Code.~~

(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194, 5705.199, or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (B)(1)(a)

of this section will not apply to the district in such next succeeding fiscal year.

(2) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if the school district board fails, pursuant to section 3316.04 of the Revised Code, to submit a plan acceptable to the state superintendent of public instruction within one hundred twenty days of the auditor of state's declaration under division (A) of this section or an updated plan when one is required by division (C) of section 3316.04 of the Revised Code;

(3) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if both of the following conditions are satisfied:

(a) The superintendent of public instruction has reported to the auditor of state that the district is not materially complying with the provisions of an original or updated plan as approved by the state superintendent under section 3316.04 of the Revised Code, and that the state superintendent has determined the declaration of a state of fiscal emergency necessary to prevent further fiscal decline;

(b) The auditor of state finds that the determination of the superintendent is reasonable.

If the auditor of state determines that the decision of the superintendent is not reasonable, the auditor of state shall provide the superintendent a written explanation of that determination.

(4) The auditor of state shall issue an order declaring a school district to be in a state of fiscal emergency if a declaration of fiscal emergency is required by division (D) of section 3316.04 of the Revised Code.

(5) The auditor of state may issue an order declaring a school district to be in a state of fiscal emergency if all of the following conditions are satisfied:

(a) An operating deficit has been certified for the current fiscal year by the auditor of state, and the certified operating deficit exceeds ten per cent, but does not exceed fifteen per cent, of the school district's general fund revenue for the preceding fiscal year;

(b) A majority of the voting electors have not voted in favor of levying a tax under section 5705.194, 5705.199, or 5705.21 or Chapter 5748. of the Revised Code that the auditor of state expects will raise enough additional revenue in the next succeeding fiscal year that division (B)(5)(a) of this section will not apply to the district in the next succeeding fiscal year;

(c) The auditor of state determines that a declaration of fiscal emergency is necessary to correct the district's fiscal problems and to prevent further fiscal decline.

(C) In making the determinations under this section, the auditor of state may use financial reports required under section 117.43 of the Revised Code; tax budgets, certificates of estimated resources and amendments thereof, annual appropriating measures and spending plans, and any other documents or information prepared pursuant to Chapter 5705. of the Revised Code; and any other documents, records, or information available to the auditor of state that indicate the conditions described in divisions (A) and (B) of this section.

(D) The auditor of state shall certify the action taken under division (A) or (B) of this section to the board of education of the school district, the director of budget and management, the mayor or county auditor who could be required to act pursuant to division (B)(1) of section 3316.05 of the Revised Code, and to the superintendent of public instruction.

(E) A determination by the auditor of state under this section that a fiscal emergency condition does not exist is final and conclusive and not appealable. A determination by the auditor of state under this section that a fiscal emergency exists is final, except that the board of education of

the school district affected by such a determination may appeal the determination of the existence of a fiscal emergency condition to the court of appeals having territorial jurisdiction over the school district. The appeal shall be heard expeditiously by the court of appeals and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the auditor of state and such court within thirty days after certification by the auditor of state to the board of education of the school district provided for in division (D) of this section. In such appeal, determinations of the auditor of state shall be presumed to be valid and the board of education shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the auditor of state as to the existence of a fiscal emergency condition under this section was in error. If the board of education fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the auditor of state was in error, the court shall dismiss the appeal. The board of education and the auditor of state may introduce any evidence relevant to the existence or nonexistence of such fiscal emergency conditions. The pendency of any such appeal shall not affect or impede the operations of this chapter; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this chapter shall be imposed by the court or any court pending determination of such appeal; and all things may be done under this chapter that may be done regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this chapter during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the court of appeals reverses the determination of the existence of a fiscal emergency condition by the auditor of state, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

Sec. 3316.06. (A) Within one hundred twenty days after the first meeting of a school district financial planning and supervision commission, the commission shall adopt a financial recovery plan regarding the school district for which the commission was created. During the formulation of the plan, the commission shall seek appropriate input from the school district board and from the community. This plan shall contain the following:

(1) Actions to be taken to:

(a) Eliminate all fiscal emergency conditions declared to exist pursuant to division (B) of section 3316.03 of the Revised Code;

(b) Satisfy any judgments, past-due accounts payable, and all past-due and payable payroll and fringe benefits;

(c) Eliminate the deficits in all deficit funds, except that any prior year deficits in the capital and maintenance fund established pursuant to section 3315.18 of the Revised Code shall be forgiven;

(d) Restore to special funds any moneys from such funds that were used for purposes not within the purposes of such funds, or borrowed from such funds by the purchase of debt obligations of the school district with the moneys of such funds, or missing from the special funds and not accounted for, if any;

(e) Balance the budget, avoid future deficits in any funds, and maintain on a current basis payments of payroll, fringe benefits, and all accounts;

(f) Avoid any fiscal emergency condition in the future;

(g) Restore the ability of the school district to market long-term general obligation bonds

under provisions of law applicable to school districts generally.

(2) The management structure that will enable the school district to take the actions enumerated in division (A)(1) of this section. The plan shall specify the level of fiscal and management control that the commission will exercise within the school district during the period of fiscal emergency, and shall enumerate respectively, the powers and duties of the commission and the powers and duties of the school board during that period. The commission may elect to assume any of the powers and duties of the school board it considers necessary, including all powers related to personnel, curriculum, and legal issues in order to successfully implement the actions described in division (A)(1) of this section.

(3) The target dates for the commencement, progress upon, and completion of the actions enumerated in division (A)(1) of this section and a reasonable period of time expected to be required to implement the plan. The commission shall prepare a reasonable time schedule for progress toward and achievement of the requirements for the plan, and the plan shall be consistent with that time schedule.

(4) The amount and purpose of any issue of debt obligations that will be issued, together with assurances that any such debt obligations that will be issued will not exceed debt limits supported by appropriate certifications by the fiscal officer of the school district and the county auditor. ~~Debt obligations issued pursuant to section 133.301 of the Revised Code shall include assurances that such debt shall be in an amount not to exceed the amount certified under division (B) of such section.~~ If the commission considers it necessary in order to maintain or improve educational opportunities of pupils in the school district, the plan may include a proposal to restructure or refinance outstanding debt obligations incurred by the board under section 3313.483 of the Revised Code contingent upon the approval, during the period of the fiscal emergency, by district voters of a tax levied under section 718.09, 718.10, 5705.194, 5705.21, 5748.02, 5748.08, or 5748.09 of the Revised Code that is not a renewal or replacement levy, or a levy under section 5705.199 of the Revised Code, and that will provide new operating revenue. Notwithstanding any provision of Chapter 133. or sections 3313.483 to 3313.4810 of the Revised Code, following the required approval of the district voters and with the approval of the commission, the school district may issue securities to evidence the restructuring or refinancing. Those securities may extend the original period for repayment, not to exceed ten years, and may alter the frequency and amount of repayments, interest or other financing charges, and other terms of agreements under which the debt originally was contracted, at the discretion of the commission, provided that any loans received pursuant to section 3313.483 of the Revised Code shall be paid from funds the district would otherwise receive under Chapter 3317. of the Revised Code, as required under division (E)(3) of section 3313.483 of the Revised Code. The securities issued for the purpose of restructuring or refinancing the debt shall be repaid in equal payments and at equal intervals over the term of the debt and are not eligible to be included in any subsequent proposal for the purpose of restructuring or refinancing debt under this section.

(5) An evaluation of the feasibility of entering into shared services agreements with other political subdivisions for the joint exercise of any power, performance of any function, or rendering of any service, if so authorized by statute.

(B) Any financial recovery plan may be amended subsequent to its adoption. Each financial recovery plan shall be updated annually.

(C) Each school district financial planning and supervision commission shall submit the financial recovery plan it adopts or updates under this section to the state superintendent of public instruction for approval immediately following its adoption or updating. The state superintendent shall evaluate the plan and either approve or disapprove it within thirty calendar days from the date of its submission. If the plan is disapproved, the state superintendent shall recommend modifications that will render it acceptable. No financial planning and supervision commission shall implement a financial recovery plan that is adopted or updated on or after April 10, 2001, unless the state superintendent has approved it.

Sec. 3317.01. As used in this section, "school district," unless otherwise specified, means any city, local, exempted village, joint vocational, or cooperative education school district and any educational service center.

This chapter shall be administered by the state board of education. The superintendent of public instruction shall calculate the amounts payable to each school district and shall certify the amounts payable to each eligible district to the treasurer of the district as provided by this chapter. ~~As soon as possible after such amounts are calculated, the superintendent shall certify to the treasurer of each school district the district's adjusted charge-off increase, as defined in section 5705.211 of the Revised Code.~~ Certification of moneys pursuant to this section shall include the amounts payable to each school building, at a frequency determined by the superintendent, for each subgroup of students, as defined in section 3317.40 of the Revised Code, receiving services, provided for by state funding, from the district or school. No moneys shall be distributed pursuant to this chapter without the approval of the controlling board.

The state board of education shall, in accordance with appropriations made by the general assembly, meet the financial obligations of this chapter.

Moneys distributed to school districts pursuant to this chapter shall be calculated based on the annual enrollment calculated from the three reports required under sections 3317.03 and 3317.036 of the Revised Code and paid on a fiscal year basis, beginning with the first day of July and extending through the thirtieth day of June. In any given fiscal year, prior to school districts submitting the first report required under section 3317.03 of the Revised Code, enrollment for the districts shall be calculated based on the third report submitted by the districts for the previous fiscal year. The moneys appropriated for each fiscal year shall be distributed periodically to each school district unless otherwise provided for. The state board, in June of each year, shall submit to the controlling board the state board's year-end distributions pursuant to this chapter.

Except as otherwise provided, payments under this chapter shall be made only to those school districts in which:

(A) The school district, except for any educational service center and any joint vocational or cooperative education school district, levies for current operating expenses at least twenty mills. Levies for joint vocational or cooperative education school districts or county school financing districts, limited to or to the extent apportioned to current expenses, shall be included in this qualification requirement. School district income tax levies under Chapter 5748. of the Revised Code, limited to or to the extent apportioned to current operating expenses, shall be included in this qualification requirement to the extent determined by the tax commissioner under division (C) of section 3317.021 of the Revised Code.

(B) The school year next preceding the fiscal year for which such payments are authorized meets the requirement of section 3313.48 of the Revised Code, with regard to the minimum number of hours school must be open for instruction with pupils in attendance, for individualized parent-teacher conference and reporting periods, and for professional meetings of teachers.

A school district shall not be considered to have failed to comply with this division because schools were open for instruction but either twelfth grade students were excused from attendance for up to the equivalent of three school days or only a portion of the kindergarten students were in attendance for up to the equivalent of three school days in order to allow for the gradual orientation to school of such students.

A board of education or governing board of an educational service center which has not conformed with other law and the rules pursuant thereto, shall not participate in the distribution of funds authorized by this chapter, except for good and sufficient reason established to the satisfaction of the state board of education and the state controlling board.

All funds allocated to school districts under this chapter, except those specifically allocated for other purposes, shall be used to pay current operating expenses only.

Sec. 4301.20. This chapter and Chapter 4303. of the Revised Code do not prevent the following:

(A) The storage of intoxicating liquor in bonded warehouses, established in accordance with the acts of congress and under the regulation of the United States, located in this state, or the transportation of intoxicating liquor to or from bonded warehouses of the United States wherever located;

(B) A bona fide resident of this state who is the owner of a warehouse receipt from obtaining or transporting to the resident's residence for the resident's own consumption and not for resale spirituous liquor stored in a government bonded warehouse in this state or in another state prior to December 1933, subject to such terms as are prescribed by the division of liquor control;

(C) The manufacture of cider from fruit for the purpose of making vinegar, and nonintoxicating cider and fruit juices for use and sale;

(D) A licensed physician or dentist from administering or dispensing intoxicating liquor or alcohol to a patient in good faith in the actual course of the practice of the physician's or dentist's profession;

(E) The sale of alcohol to physicians, dentists, druggists, veterinary surgeons, manufacturers, hospitals, infirmaries, or medical or educational institutions using the alcohol for medicinal, mechanical, chemical, or scientific purposes;

(F) The sale, gift, or keeping for sale by druggists and others of any of the medicinal preparations manufactured in accordance with the formulas prescribed by the United States Pharmacopoeia and National Formulary, patent or proprietary preparations, and other bona fide medicinal and technical preparations, which contain no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, which are manufactured and sold as medicine and not as beverages, are unfit for use for beverage purposes, and the sale of which does not require the payment of a United States liquor dealer's tax;

(G) The manufacture and sale of tinctures or of toilet, medicinal, and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for

beverage purposes, if upon the outside of each bottle, box, or package of which there is printed in the English language, conspicuously and legibly, the quantity by volume of alcohol in the preparation or solution;

(H) The manufacture and keeping for sale of the food products known as flavoring extracts when manufactured and sold for cooking, culinary, or flavoring purposes, and which are unfit for use for beverage purposes;

(I) The lawful sale of wood alcohol or of ethyl alcohol for external use when combined with other substances as to make it unfit for internal use;

(J) The manufacture, sale, and transport of ethanol or ethyl alcohol for use as fuel. As used in this division, "ethanol" has the same meaning as in section ~~5733.46~~ 122.075 of the Revised Code.

(K) The purchase and importation into this state or the purchase at wholesale from A or B permit holders in this state of beer and intoxicating liquor for use in manufacturing processes of nonbeverage food products under terms prescribed by the division, provided that the terms prescribed by the division shall not increase the cost of the beer or intoxicating liquor to any person, firm, or corporation purchasing and importing it into this state or purchasing it from an A or B permit holder for that use;

(L) Any resident of this state or any member of the armed forces of the United States, who has attained the age of twenty-one years, from bringing into this state, for personal use and not for resale, not more than one liter of spirituous liquor, four and one-half liters of wine, or two hundred eighty-eight ounces of beer in any thirty-day period, and the same is free of any tax consent fee when the resident or member of the armed forces physically possesses and accompanies the spirituous liquor, wine, or beer on returning from a foreign country, another state, or an insular possession of the United States;

(M) Persons, at least twenty-one years of age, who collect ceramic commemorative bottles containing spirituous liquor that have unbroken federal tax stamps on them from selling or trading the bottles to other collectors. The bottles shall originally have been purchased at retail from the division, legally imported under division (L) of this section, or legally imported pursuant to a supplier registration issued by the division. The sales shall be for the purpose of exchanging a ceramic commemorative bottle between private collectors and shall not be for the purpose of selling the spirituous liquor for personal consumption. The sale or exchange authorized by this division shall not occur on the premises of any permit holder, shall not be made in connection with the business of any permit holder, and shall not be made in connection with any mercantile business.

(N) The sale of beer or intoxicating liquor without a liquor permit at a private residence, not more than five times per calendar year at a residence address, at an event that has the following characteristics:

(1) The event is for a charitable, benevolent, or political purpose, but shall not include any event the proceeds of which are for the profit or gain of any individual;

(2) The event has in attendance not more than fifty people;

(3) The event shall be for a period not to exceed twelve hours;

(4) The sale of beer and intoxicating liquor at the event shall not take place between two-thirty a.m. and five-thirty a.m.;

(5) No person under twenty-one years of age shall purchase or consume beer or intoxicating

liquor at the event and no beer or intoxicating liquor shall be sold to any person under twenty-one years of age at the event; and

(6) No person at the event shall sell or furnish beer or intoxicating liquor to an intoxicated person.

(O) The possession or consumption of beer or intoxicating liquor by a person who is under twenty-one years of age and who is a student at an accredited college or university, provided that both of the following apply:

(1) The person is required to taste and expectorate the beer or intoxicating liquor for a culinary, food service, or hospitality course.

(2) The person is under the direct supervision of the instructor of the culinary, food service, or hospitality course.

Sec. 4582.024. After a port authority has been created, any municipal corporation, township, or county, acting by ordinance, resolution of the township trustees, or resolution of the county commissioners, respectively, which is contiguous to such port authority, or to any municipal corporation, township, or county which proposes to join such port authority at the same time and is contiguous to such port authority, or any county within which such port authority is situated, may join such port authority and thereupon the jurisdiction and territory of such port authority shall include such municipal corporation, county, or township. If more than one such political subdivision is to be joined to the port authority at the same time, then each such ordinance or resolution shall designate the political subdivisions which are to be so joined. Any territory or municipal corporation not included in a port authority and which is annexed to a municipal corporation included within the jurisdiction and territory of a port authority shall, on such annexation and without further proceedings, be annexed to and be included in the jurisdiction and territory of such port authority. Before such political subdivision or subdivisions are joined to a port authority, other than by annexation to a municipality, the political subdivision or subdivisions theretofore comprising such port authority shall agree upon the terms and conditions pursuant to which such political subdivision or subdivisions are to be joined. For all purposes of sections 4582.01 to 4582.20, inclusive, of the Revised Code, such political subdivision or subdivisions shall be considered to have participated in the creation of such port authority, except that the initial term of any director of the port authority appointed by such a political subdivision shall be four years. After each ordinance or resolution proposing joinder to the port authority has become effective and the terms and conditions of joinder have been agreed to, the board of directors of the port authority shall by resolution either accept or reject such joinder. Such joinder shall be effective on adoption of the resolution accepting such joinder, unless the port authority to which a political subdivision or subdivisions including a county within which such port authority is located, are to be joined has authority under section 4582.14 of the Revised Code to levy a tax on property within its jurisdiction, then such joinder shall not be effective until approved by the affirmative vote of a majority of the electors voting on the question of such joinder. If more than one political subdivision is to be joined to the port authority, then the electors of such subdivision shall vote as a district and the majority affirmative vote shall be determined by the vote cast in such district as a whole. Such election shall be called by the board of directors of the port authority and shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.191 of the Revised Code except that the question

appearing on the ballot shall read:
"Shall _____
(name or names of political subdivisions to be joined)
be joined to _____ (name) port authority and the
~~(name)~~
existing tax levy (levies) of such port authority (aggregating)
_____ mill per dollar of valuation be authorized to be
levied against properties within
_____"
(name or names of political subdivisions to be joined)

If the question is approved such joinder shall be immediately effective and the port authority shall be authorized to extend the levy of such tax against all the taxable property within the political subdivision or political subdivisions which have been joined. If such question is approved at a general election then the port authority may amend its budget and resolution adopted pursuant to section 5705.34 of the Revised Code and such levy shall be placed on the current tax list and duplicate and collected as other taxes are collected from all taxable property within the port authority including the political subdivision or political subdivisions joined as a result of such election.

Sec. 4582.26. After a port authority has been created, any municipal corporation, township, county, or other political subdivision, acting by ordinance or resolution, which is contiguous to any municipal corporation, township, county, or other political subdivision which participated in the creation of such port authority or to any municipal corporation, township, county, or other political subdivision which proposes to join the port authority at the same time and is contiguous to any municipal corporation, township, county, or other political subdivision which participated in the creation of such port authority, may join such port authority, and thereupon the jurisdiction and territory of the port authority includes the municipal corporation, county, township, or other political subdivision so joining. If more than one such political subdivision is to be joined to the port authority at the same time, then each such ordinance or resolution shall designate the political subdivisions which are to be so joined. Any territory or municipal corporation not included in a port authority and which is annexed to a municipal corporation included within the jurisdiction and territory of a port authority shall, on such annexation and without further proceedings, be annexed to and be included in the jurisdiction and territory of the port authority. Before such political subdivision or subdivisions are joined to a port authority, other than by annexation to a municipal corporation, the political subdivision or subdivisions theretofore comprising such port authority shall agree upon the terms and conditions pursuant to which such political subdivision or subdivisions are to be joined. For all purposes of sections 4582.21 to 4582.59 of the Revised Code, such political subdivision or subdivisions shall be considered to have participated in the creation of such port authority, except that the initial term of any director of the port authority appointed by such a political subdivision shall be four years. After each ordinance or resolution proposing joinder to the port authority has become effective and the terms and conditions of joinder have been agreed to, the board of directors of the port authority shall by resolution either accept or reject such joinder. Such joinder shall be effective upon adoption of the resolution accepting such joinder, unless the port authority to which a political subdivision or subdivisions, including a county within which such port authority is located, are to be joined, has authority under section 4582.40 of the Revised Code to levy a tax on property within its

jurisdiction, then such joinder shall not be effective until approved by the affirmative vote of a majority of the electors voting on the question of the joinder. If more than one political subdivision is to be joined to the port authority, then the electors of such subdivisions shall vote as a district and the majority affirmative vote shall be determined by the vote cast in such district as a whole. The election shall be called by the board of directors of the port authority and shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.191 of the Revised Code except that the question appearing on the ballot shall read:

"Shall _____
(Name or names of political subdivisions to be joined)
_____
~~be joined)~~
be joined to _____ (Name) port authority
~~(Name)~~
and the existing tax levy (levies) of such port authority
(aggregating) _____ mill per dollar of valuation
be authorized to be levied against properties within
_____?"
(Name or names of political subdivisions to be joined)

If the question is approved the joinder becomes immediately effective and the port authority is authorized to extend the levy of such tax against all the taxable property within the political subdivision or political subdivisions which have been joined. If such question is approved at a general election, then the port authority may amend its budget and resolution adopted pursuant to section 5705.34 of the Revised Code and such levy shall be placed on the current tax list and duplicate and collected as other taxes are collected from all taxable property within the port authority including the political subdivision or political subdivisions joined as a result of the election.

Sec. 4582.56. (A) As used in this section:

(1) "Eligible county" means a county whose territory includes a part of Lake Erie the shoreline of which represents at least fifty per cent of the linear length of the county's border with other counties of this state.

(2) "Lakeshore improvement project" means construction of a port authority facility within one mile of the Lake Erie shoreline in an eligible county.

(3) "Construction" includes acquisition, alteration, construction, creation, development, enlargement, equipment, improvement, installation, reconstruction, remodeling, renovation, or any combination thereof.

(B) The board of directors of a port authority may enter into an agreement with the board of county commissioners of an eligible county that created the port authority providing for all of the following, and any other terms mutually agreeable to the boards:

(1) The board of county commissioners levies an excise tax under division ~~(M)~~ (U) of section 5739.09 of the Revised Code and pledges all the revenue from the tax to the port authority for the purpose of financing lakeshore improvement projects including the payment of debt charges on any securities issued under division (C) of this section.

(2) The port authority constructs or finances the construction of lakeshore improvements and pays the costs of such projects with revenue from the tax pledged under the agreement. Such construction or financing is an authorized purpose for the purposes of division (B) of section 4582.21

of the Revised Code.

(3) The port authority may not enter into any contract or other obligation regarding a lakeshore improvement project before obtaining the approval for the project by the board of county commissioners by a resolution of the board.

(C) The board of directors of a port authority that enters into an agreement under this section may issue port authority special obligation bonds, and notes anticipating the proceeds of the bonds, in the principal amount that, in the opinion of the board, are necessary for the purpose of paying the costs of one or more lakeshore improvement projects or parts of one or more projects and interest on the bonds payable over the term of the issue. The board may refund any special obligation bonds by the issuance of special obligation refunding bonds regardless of whether the bonds to be refunded have or have not matured. The refunding bonds shall be sold, and the proceeds needed for such purpose applied, in the manner provided in the bond proceedings.

Every issue of special obligation bonds issued under this section shall be payable from the revenue from the tax levied under division ~~(M)~~ (U) of section 5739.09 of the Revised Code and pledged for such payment under the agreement. The pledge shall be valid and binding from the time the pledge is made, and the revenue so pledged and received by the port authority shall be subject to the lien of the pledge without any physical delivery of the revenue or any further act. The lien of any pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the port authority, whether or not such parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the port authority's records.

Whether or not the bonds are of such form and character as to be negotiable instruments under Title XIII of the Revised Code, the bonds shall have all the qualities and incidents of negotiable instruments, subject only to their provisions for registration, if any.

Bonds issued under this section shall bear such date or dates, and shall mature at such time or times not exceeding thirty years from the date of issue of the original bonds and shall be executed in the manner that the resolution authorizing the bonds may provide. The bonds shall bear interest at such rates, or at variable rate or rates changing from time to time, in accordance with provisions provided in the authorizing resolution, shall be in such denominations and form, either coupon or registered, shall carry such registration privileges, shall be payable in such medium of payment and at such place or places, and be subject to such terms of redemption, as the board of directors of the port authority may authorize or provide. The bonds may be sold at public or private sale, and at, or at not less than, the price or prices as the board determines. If any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be such officer before delivery of the bonds, the signature or facsimile shall nevertheless be sufficient for all purposes as if the officer had remained in office until delivery of the bonds, and in case the seal of the authority has been changed after a facsimile has been imprinted on the bonds, the facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing bonds under this section may contain provisions governing the use and disposition of revenue pledged under the agreement under division (B) of this section; the crediting of the proceeds of the sale of the bonds to and among the funds referred to or provided for in the resolution; limitations on the purpose to which the proceeds of sale of the bonds may be

applied and the pledging of portions of such proceeds to secure payment of the bonds; the issuance of notes in anticipation of the issuance of bonds; the terms upon which additional bonds may be issued and secured; the refunding of outstanding bonds; the procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; securing any bonds by a trust agreement in accordance with division (D) of this section; and any other matters that may affect the security or protection of the bonds. The taxes anticipated by the bonds are not subject to diminution by initiative or referendum or by law while the bonds or notes remain outstanding in accordance with their terms, unless provision is made by law or by the board of county commissioners and board of directors of the port authority for an adequate substitute therefor reasonably satisfactory to the trustee, if a trust agreement secures the bonds.

Neither the members of the board of directors of the port authority nor any person executing the bonds shall be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance.

(D) In the discretion of the board of directors, the bonds issued under this section may be secured by a trust agreement between the board of directors on behalf of the port authority and a corporate trustee, which may be any trust company or bank having powers of a trust company, within or outside the state.

The trust agreement may provide for the pledge or assignment of the tax revenue to be received under the agreement entered into under division (B) of this section, but shall not pledge the general credit or other taxing power of the county or the general credit or taxing power of the port authority. The trust agreement or the resolution providing for the issuance of the bonds may set forth the rights and remedies of the bondholders and trustee, and may contain other provisions for protecting and enforcing their rights and remedies that are determined in the discretion of the board of directors to be reasonable and proper.

Sec. 4723.43. A certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner may provide to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education and clinical experience. In this capacity as an advanced practice registered nurse, a certified nurse-midwife is subject to division (A) of this section, a certified registered nurse anesthetist is subject to division (B) of this section, a certified nurse practitioner is subject to division (C) of this section, and a clinical nurse specialist is subject to division (D) of this section.

(A) A nurse authorized to practice as a certified nurse-midwife, in collaboration with one or more physicians, may provide the management of preventive services and those primary care services necessary to provide health care to women antepartally, intrapartally, postpartally, and gynecologically, consistent with the nurse's education and certification, and in accordance with rules adopted by the board of nursing.

No certified nurse-midwife may perform version, deliver breech or face presentation, use forceps, do any obstetric operation, or treat any other abnormal condition, except in emergencies. Division (A) of this section does not prohibit a certified nurse-midwife from performing episiotomies or normal vaginal deliveries, or repairing vaginal tears. A certified nurse-midwife may, in collaboration with one or more physicians, prescribe drugs and therapeutic devices in accordance

with section 4723.481 of the Revised Code.

(B) A nurse authorized to practice as a certified registered nurse anesthetist~~, with the supervision and in the immediate presence of a physician, podiatrist, or dentist, may administer anesthesia and perform anesthesia induction, maintenance, and emergence, and may perform with supervision preanesthetic preparation and evaluation, postanesthesia care, and clinical support functions~~, consistent with the nurse's education and certification~~,~~ and in accordance with rules adopted by the board, may do the following:

(1) With supervision and in the immediate presence of a physician, podiatrist, or dentist, administer anesthesia and perform anesthesia induction, maintenance, and emergence;

(2) With supervision, obtain informed consent for anesthesia care and perform preanesthetic preparation and evaluation, postanesthetic preparation and evaluation, postanesthesia care, and, subject to section 4723.433 of the Revised Code, clinical support functions;

(3) With supervision and in accordance with section 4723.434 of the Revised Code, engage in the activities described in division (A) of that section.

The physician, podiatrist, or dentist supervising a certified registered nurse anesthetist must be actively engaged in practice in this state. When a certified registered nurse anesthetist is supervised by a podiatrist, the nurse's scope of practice is limited to the anesthesia procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform. A certified registered nurse anesthetist may not administer general anesthesia under the supervision of a podiatrist in a podiatrist's office. When a certified registered nurse anesthetist is supervised by a dentist, the nurse's scope of practice is limited to the anesthesia procedures that the dentist has the authority under Chapter 4715. of the Revised Code to perform.

(C) A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists, may provide preventive and primary care services, provide services for acute illnesses, and evaluate and promote patient wellness within the nurse's nursing specialty, consistent with the nurse's education and certification, and in accordance with rules adopted by the board. A certified nurse practitioner may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a certified nurse practitioner is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

(D) A nurse authorized to practice as a clinical nurse specialist, in collaboration with one or more physicians or podiatrists, may provide and manage the care of individuals and groups with complex health problems and provide health care services that promote, improve, and manage health care within the nurse's nursing specialty, consistent with the nurse's education and in accordance with rules adopted by the board. A clinical nurse specialist may, in collaboration with one or more physicians or podiatrists, prescribe drugs and therapeutic devices in accordance with section 4723.481 of the Revised Code.

When a clinical nurse specialist is collaborating with a podiatrist, the nurse's scope of practice is limited to the procedures that the podiatrist has the authority under section 4731.51 of the Revised Code to perform.

Sec. 4723.433. When performing clinical support functions as authorized by section 4723.43

of the Revised Code, a certified registered nurse anesthetist may direct a registered nurse, licensed practical nurse, or respiratory therapist to provide supportive care, including monitoring vital signs, conducting electrocardiograms, and administering intravenous fluids, if the nurse or therapist is authorized by law to provide such care.

In addition, the certified registered nurse anesthetist may direct the nurse or therapist to administer treatments, drugs, and intravenous fluids to treat conditions related to the administration of anesthesia if the nurse or therapist is authorized by law to administer treatments, drugs, and intravenous fluids and a physician, podiatrist, or dentist ordered the treatments, drugs, and intravenous fluids.

Sec. 4723.434. (A) During the time period that begins on a patient's admission for a surgery or procedure to a health care facility where the certified registered nurse anesthetist practices and ends with the patient's discharge from recovery, the nurse may engage in one or more of the following activities:

(1) Performing and documenting evaluations and assessments, which may include ordering and evaluating one or more diagnostic tests for conditions related to the administration of anesthesia;

(2) As necessary for patient management and care, selecting, ordering, and administering treatments, drugs, and intravenous fluids for conditions related to the administration of anesthesia;

(3) As necessary for patient management and care, directing registered nurses, licensed practical nurses, and respiratory therapists to perform either or both of the following activities if authorized by law to perform such activities:

(a) Providing supportive care, including monitoring vital signs, conducting electrocardiograms, and administering intravenous fluids;

(b) Administering treatments, drugs, and intravenous fluids to treat conditions related to the administration of anesthesia.

(B)(1) A certified registered nurse anesthetist may not engage in one or more of the activities described in division (A) of this section unless all of the following apply:

(a) The nurse is physically present at the health care facility when performing the activities.

(b) The nurse's supervising physician, podiatrist, or dentist is physically present at the health care facility where the nurse is performing the activities.

(c) The health care facility where the nurse practices has adopted a written policy developed by the facility's medical, nursing, and pharmacy directors that meets the requirements of section 4723.435 of the Revised Code.

(2) A certified registered nurse anesthetist shall not engage in one or more of the activities described in division (A) of this section if the supervising physician, podiatrist, or dentist or the health care facility where the nurse practices determines that it is not in a patient's best interest for the nurse to perform such an activity or activities. If a supervising physician, podiatrist, or dentist or facility makes such a determination, the patient's medical or electronic health record shall indicate that the nurse is prohibited from performing the activity or activities.

(3) If a certified registered nurse anesthetist performs one or more of the activities described in division (A) of this section, the nurse shall so indicate in the patient's medical or electronic health record.

(C)(1) This section does not authorize a certified registered nurse anesthetist to prescribe a

drug for use outside of the health care facility where the nurse practices.

(2) This section does not prohibit a certified registered nurse from implementing a verbal order of a supervising physician, podiatrist, or dentist.

Sec. 4723.435. (A) A written policy adopted by a health care facility as described in section 4723.434 of the Revised Code shall establish standards and procedures to be followed by certified registered nurse anesthetists when performing one or more of the following activities in the health care facility:

(1) Selecting, ordering, and administering treatments, drugs, and intravenous fluids;

(2) Ordering diagnostic tests and evaluating those tests;

(3) Directing registered nurses, licensed practical nurses, and respiratory therapists to perform activities as described in division (A)(3) of section 4723.434 of the Revised Code.

(B) In adopting a policy, both of the following apply:

(1) The health care facility shall not authorize a certified registered nurse anesthetist to select, order, or administer any drug that a supervising physician, podiatrist, or dentist is not authorized to prescribe.

(2) The health care facility shall allow a supervising physician, podiatrist, or dentist to issue every order related to a patient's anesthesia care.

Sec. 4729.01. As used in this chapter:

(A) "Pharmacy," except when used in a context that refers to the practice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing where the practice of pharmacy is conducted.

(B) "Practice of pharmacy" means providing pharmacist care requiring specialized knowledge, judgment, and skill derived from the principles of biological, chemical, behavioral, social, pharmaceutical, and clinical sciences. As used in this division, "pharmacist care" includes the following:

(1) Interpreting prescriptions;

(2) Dispensing drugs and drug therapy related devices;

(3) Compounding drugs;

(4) Counseling individuals with regard to their drug therapy, recommending drug therapy related devices, and assisting in the selection of drugs and appliances for treatment of common diseases and injuries and providing instruction in the proper use of the drugs and appliances;

(5) Performing drug regimen reviews with individuals by discussing all of the drugs that the individual is taking and explaining the interactions of the drugs;

(6) Performing drug utilization reviews with licensed health professionals authorized to prescribe drugs when the pharmacist determines that an individual with a prescription has a drug regimen that warrants additional discussion with the prescriber;

(7) Advising an individual and the health care professionals treating an individual with regard to the individual's drug therapy;

(8) Acting pursuant to a consult agreement with one or more physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery, if an agreement has been established;

(9) Engaging in the administration of immunizations to the extent authorized by section

4729.41 of the Revised Code;

(10) Engaging in the administration of drugs to the extent authorized by section 4729.45 of the Revised Code.

(C) "Compounding" means the preparation, mixing, assembling, packaging, and labeling of one or more drugs in any of the following circumstances:

(1) Pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs;

(2) Pursuant to the modification of a prescription made in accordance with a consult agreement;

(3) As an incident to research, teaching activities, or chemical analysis;

(4) In anticipation of orders for drugs pursuant to prescriptions, based on routine, regularly observed dispensing patterns;

(5) Pursuant to a request made by a licensed health professional authorized to prescribe drugs for a drug that is to be used by the professional for the purpose of direct administration to patients in the course of the professional's practice, if all of the following apply:

(a) At the time the request is made, the drug is not commercially available regardless of the reason that the drug is not available, including the absence of a manufacturer for the drug or the lack of a readily available supply of the drug from a manufacturer.

(b) A limited quantity of the drug is compounded and provided to the professional.

(c) The drug is compounded and provided to the professional as an occasional exception to the normal practice of dispensing drugs pursuant to patient-specific prescriptions.

(D) "Consult agreement" means an agreement that has been entered into under section 4729.39 of the Revised Code.

(E) "Drug" means:

(1) Any article recognized in the United States pharmacopoeia and national formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of humans or animals;

(4) Any article intended for use as a component of any article specified in division (E)(1), (2), or (3) of this section; but does not include devices or their components, parts, or accessories.

"Drug" does not include "hemp" or a "hemp product" as those terms are defined in section 928.01 of the Revised Code.

(F) "Dangerous drug" means any of the following:

(1) Any drug to which either of the following applies:

(a) Under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;

(b) Under Chapter 3715. or 3719. of the Revised Code, the drug may be dispensed only upon a prescription.

(2) Any drug that contains a schedule V controlled substance and that is exempt from Chapter 3719. of the Revised Code or to which that chapter does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body;

(4) Any drug that is a biological product, as defined in section 3715.01 of the Revised Code.

(G) "Federal drug abuse control laws" has the same meaning as in section 3719.01 of the Revised Code.

(H) "Prescription" means all of the following:

(1) A written, electronic, or oral order for drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, issued by a licensed health professional authorized to prescribe drugs;

(2) For purposes of sections 2925.61, 4723.488, 4730.431, and 4731.94 of the Revised Code, a written, electronic, or oral order for naloxone issued to and in the name of a family member, friend, or other individual in a position to assist an individual who there is reason to believe is at risk of experiencing an opioid-related overdose.

(3) For purposes of section 4729.44 of the Revised Code, a written, electronic, or oral order for naloxone issued to and in the name of either of the following:

(a) An individual who there is reason to believe is at risk of experiencing an opioid-related overdose;

(b) A family member, friend, or other individual in a position to assist an individual who there is reason to believe is at risk of experiencing an opioid-related overdose.

(4) For purposes of sections 4723.4810, 4729.282, 4730.432, and 4731.93 of the Revised Code, a written, electronic, or oral order for a drug to treat chlamydia, gonorrhea, or trichomoniasis issued to and in the name of a patient who is not the intended user of the drug but is the sexual partner of the intended user;

(5) For purposes of sections 3313.7110, 3313.7111, 3314.143, 3326.28, 3328.29, 4723.483, 4729.88, 4730.433, 4731.96, and 5101.76 of the Revised Code, a written, electronic, or oral order for an epinephrine autoinjector issued to and in the name of a school, school district, or camp;

(6) For purposes of Chapter 3728. and sections 4723.483, 4729.88, 4730.433, and 4731.96 of the Revised Code, a written, electronic, or oral order for an epinephrine autoinjector issued to and in the name of a qualified entity, as defined in section 3728.01 of the Revised Code.

(I) "Licensed health professional authorized to prescribe drugs" or "prescriber" means an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following:

(1) A dentist licensed under Chapter 4715. of the Revised Code;

(2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice nursing as an advanced practice registered nurse ~~issued under Chapter 4723. of the Revised Code~~;

(3) A certified registered nurse anesthetist who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice nursing as an advanced practice registered nurse, but

only to the extent of the nurse's authority under sections 4723.43 and 4723.434 the Revised Code;

(4) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

~~(4)~~ (5) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery;

~~(5)~~ (6) A physician assistant who holds a license to practice as a physician assistant issued under Chapter 4730. of the Revised Code, holds a valid prescriber number issued by the state medical board, and has been granted physician-delegated prescriptive authority;

~~(6)~~ (7) A veterinarian licensed under Chapter 4741. of the Revised Code.

(J) "Sale" or "sell" includes any transaction made by any person, whether as principal proprietor, agent, or employee, to do or offer to do any of the following: deliver, distribute, broker, exchange, gift or otherwise give away, or transfer, whether the transfer is by passage of title, physical movement, or both.

(K) "Wholesale sale" and "sale at wholesale" mean any sale in which the purpose of the purchaser is to resell the article purchased or received by the purchaser.

(L) "Retail sale" and "sale at retail" mean any sale other than a wholesale sale or sale at wholesale.

(M) "Retail seller" means any person that sells any dangerous drug to consumers without assuming control over and responsibility for its administration. Mere advice or instructions regarding administration do not constitute control or establish responsibility.

(N) "Price information" means the price charged for a prescription for a particular drug product and, in an easily understandable manner, all of the following:

(1) The proprietary name of the drug product;

(2) The established (generic) name of the drug product;

(3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient.

(4) The dosage form;

(5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.

(O) "Wholesale distributor of dangerous drugs" or "wholesale distributor" means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of such a person authorized by the person to engage in the sale of dangerous drugs at wholesale.

(P) "Manufacturer of dangerous drugs" or "manufacturer" means a person, other than a pharmacist or prescriber, who manufactures dangerous drugs and who is engaged in the sale of those dangerous drugs.

(Q) "Terminal distributor of dangerous drugs" or "terminal distributor" means a person who

is engaged in the sale of dangerous drugs at retail, or any person, other than a manufacturer, repackager, outsourcing facility, third-party logistics provider, wholesale distributor, or pharmacist, who has possession, custody, or control of dangerous drugs for any purpose other than for that person's own use and consumption. "Terminal distributor" includes pharmacies, hospitals, nursing homes, and laboratories and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist, licensed health professional authorized to prescribe drugs, or other person authorized by the state board of pharmacy.

(R) "Promote to the public" means disseminating a representation to the public in any manner or by any means, other than by labeling, for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of a dangerous drug at retail.

(S) "Person" includes any individual, partnership, association, limited liability company, or corporation, the state, any political subdivision of the state, and any district, department, or agency of the state or its political subdivisions.

(T) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.

(U) "Food" has the same meaning as in section 3715.01 of the Revised Code.

(V) "Pain management clinic" has the same meaning as in section 4731.054 of the Revised Code.

(W) "Investigational drug or product" means a drug or product that has successfully completed phase one of the United States food and drug administration clinical trials and remains under clinical trial, but has not been approved for general use by the United States food and drug administration. "Investigational drug or product" does not include controlled substances in schedule I, as defined in section 3719.01 of the Revised Code.

(X) "Product," when used in reference to an investigational drug or product, means a biological product, other than a drug, that is made from a natural human, animal, or microorganism source and is intended to treat a disease or medical condition.

(Y) "Third-party logistics provider" means a person that provides or coordinates warehousing or other logistics services pertaining to dangerous drugs including distribution, on behalf of a manufacturer, wholesale distributor, or terminal distributor of dangerous drugs, but does not take ownership of the drugs or have responsibility to direct the sale or disposition of the drugs.

(Z) "Repackager of dangerous drugs" or "repackager" means a person that repacks and relabels dangerous drugs for sale or distribution.

(AA) "Outsourcing facility" means a facility that is engaged in the compounding and sale of sterile drugs and is registered as an outsourcing facility with the United States food and drug administration.

(BB) "Laboratory" means a laboratory licensed under this chapter as a terminal distributor of dangerous drugs and entrusted to have custody of any of the following drugs and to use the drugs for scientific and clinical purposes and for purposes of instruction: dangerous drugs that are not controlled substances, as defined in section 3719.01 of the Revised Code; dangerous drugs that are controlled substances, as defined in that section; and controlled substances in schedule I, as defined in that section.

Sec. 4761.17. All of the following apply to the practice of respiratory care by a person who holds a license or limited permit issued under this chapter:

(A) The person shall practice only pursuant to a prescription or other order for respiratory care issued by any of the following:

(1) A physician;

(2) A clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice nursing as an advanced practice registered nurse and has entered into a standard care arrangement with a physician;

(3) A certified registered nurse anesthetist who holds a current, valid license issued under Chapter 4723. of the Revised Code to practice nursing as an advanced practice registered nurse and acts in compliance with sections 4723.43, 4723.433, and 4723.434 of the Revised Code;

(4) A physician assistant who holds a valid prescriber number issued by the state medical board, has been granted physician-delegated prescriptive authority, and has entered into a supervision agreement that allows the physician assistant to prescribe or order respiratory care services.

(B) The person shall practice only under the supervision of any of the following:

(1) A physician;

(2) A certified nurse practitioner, certified nurse-midwife, or clinical nurse specialist;

(3) A physician assistant who is authorized to prescribe or order respiratory care services as provided in division ~~(A)(3)~~ (A)(4) of this section.

(C)(1) When practicing under the prescription or order of a certified nurse practitioner, certified nurse midwife, or clinical nurse specialist or under the supervision of such a nurse, the person's administration of medication that requires a prescription is limited to the drugs that the nurse is authorized to prescribe pursuant to section 4723.481 of the Revised Code.

(2) When practicing under the order of a certified registered nurse anesthetist, the person's administration of medication is limited to the drugs that the nurse is authorized to order or direct the person to administer, as provided in sections 4723.43, 4723.433, and 4723.434 of the Revised Code.

(3) When practicing under the prescription or order of a physician assistant or under the supervision of a physician assistant, the person's administration of medication that requires a prescription is limited to the drugs that the physician assistant is authorized to prescribe pursuant to the physician assistant's physician-delegated prescriptive authority.

Sec. 5104.31. (A) Publicly funded child care may be provided only by the following:

(1) Any of the following licensed by the department of job and family services pursuant to section 5104.03 of the Revised Code or pursuant to rules adopted under section 5104.018 of the Revised Code:

(a) A child day-care center, including a parent cooperative child day-care center;

(b) A type A family day-care home, including a parent cooperative type A family day-care home;

(c) A licensed type B family day-care home.

(2) An in-home aide who has been certified by the county department of job and family services pursuant to section 5104.12 of the Revised Code;

(3) A child day camp approved pursuant to section 5104.22 of the Revised Code;

(4) A licensed preschool program;

(5) A licensed school child program;

(6) A border state child care provider, except that a border state child care provider may provide publicly funded child care only to an individual who resides in an Ohio county that borders the state in which the provider is located.

(B) Publicly funded child day-care may be provided in a child's own home only by an in-home aide.

(C)(1) Beginning ~~July~~ September 1, 2020, and except as provided in division (C)(2) of this section, a licensed child care program may provide publicly funded child care only if the program is rated through the step up to quality program established pursuant to section 5104.29 of the Revised Code.

(2) A licensed child care program that is any of the following may provide publicly funded child care without being rated through the step up to quality program:

(a) A program that operates only during the summer and for not more than fifteen consecutive weeks;

(b) A program that operates only during school breaks;

(c) A program that operates only on weekday evenings, weekends, or both;

(d) A program that holds a provisional license issued under section 5104.03 of the Revised Code;

(e) A program that had its step up to quality program rating removed by the department of job and family services within the previous twelve months;

(f) A program that is the subject of a revocation action initiated by the department, but the license has not yet been revoked.

Sec. 5701.08. As used in Title LVII of the Revised Code:

(A) Personal property is "used" within the meaning of "used in business" when employed or utilized in connection with ordinary or special operations, when acquired or held as means or instruments for carrying on the business, when kept and maintained as a part of a plant capable of operation, whether actually in operation or not, or when stored or kept on hand as material, parts, products, or merchandise. Machinery and equipment classifiable upon completion as personal property while under construction or installation to become part of a new or existing plant or other facility is not considered to be "used" by the owner of such plant or other facility within the meaning of "used in business" until such machinery and equipment is installed and in operation or capable of operation in the business for which acquired. Agricultural products in storage in a grain elevator, a warehouse, or a place of storage which products are subject to control of the United States government and are to be shipped on order of the United States government are not used in business in this state.

(B) Merchandise or agricultural products shipped from outside this state and held in this state in a warehouse or a place of storage without further manufacturing or processing and for storage only and for shipment outside this state are not used in business in this state. Such property qualifies for this exception if division (B)(1) or (2) of this section applies:

(1) During any period that a person owns such property in this state:

(a) The property is to be shipped from a warehouse or place of storage in this state to the

owner of the property or persons other than customers at locations outside this state for use, processing, or sale; or

(b) The property is located in public or private warehousing facilities in this state which are not subject to the control of or under the supervision of the owner of the property or manned by its employees and from which the property is to be shipped to any person, including a customer, outside this state.

(2) During the first twenty-four calendar months that a person first owns such property in this state, the property is held in a warehouse or place of storage in this state located within one mile of the closest boundary of an airport, and is shipped to any person, including a customer, outside this state.

For the purposes of division (B)(2) of this section, "airport" means any airport, as defined in division (C) of section 4561.01 of the Revised Code, which is approved by the department of transportation under section 4561.11 of the Revised Code to be used for commercial purposes, is regularly served by only one air carrier authorized to do so under 14 C.F.R., and is not a public airport as defined in 49 U.S.C. Appx. 2202(a)(17) as existing on ~~the effective date of this amendment~~ July 26, 1991.

(3) For property that may meet the condition for the exception provided in division (B)(2) of this section, if it is not known at the conclusion of a reporting period whether the property yet qualifies for such exception, the owner of such property shall return it for taxation. If it is later determined that the returned property does so qualify, the owner may apply for a final assessment and refund on the property as provided in section 5711.26 of the Revised Code.

(C) Leased property used by the lessee exclusively for agricultural purposes and new or used machinery and equipment and accessories therefor that are designed and built for agricultural use and owned by a merchant as defined in section 5711.15 of the Revised Code are not considered to be "used" within the meaning of "used in business."

(D) Moneys, deposits, investments, accounts receivable, and prepaid items, and other taxable intangibles are "used" when they or the avails thereof are being applied, or are intended to be applied, in the conduct of the business, whether in this state or elsewhere.

(E) "Business" includes all enterprises, except agriculture, conducted for gain, profit, or income and extends to personal service occupations.

Sec. 5701.11. The effective date to which this section refers is the effective date of this section as amended by ~~S.B. 22~~ H.B. 197 of the ~~132nd~~ 133rd general assembly.

(A)(1) Except as provided under division (A)(2) or (B) of this section, any reference in Title LVII of the Revised Code to the Internal Revenue Code, to the Internal Revenue Code "as amended," to other laws of the United States, or to other laws of the United States, "as amended," means the Internal Revenue Code or other laws of the United States as they exist on the effective date.

(2) This section does not apply to any reference in Title LVII of the Revised Code to the Internal Revenue Code as of a date certain specifying the day, month, and year, or to other laws of the United States as of a date certain specifying the day, month, and year.

(B)(1) For purposes of applying section 5733.04, 5745.01, or 5747.01 of the Revised Code to a taxpayer's taxable year ending after March 30, ~~2017~~2018, and before the effective date, a taxpayer may irrevocably elect to incorporate the provisions of the Internal Revenue Code or other laws of the

United States that are in effect for federal income tax purposes for that taxable year if those provisions differ from the provisions that, under division (A) of this section, would otherwise apply. The filing by the taxpayer for that taxable year of a report or return that incorporates the provisions of the Internal Revenue Code or other laws of the United States applicable for federal income tax purposes for that taxable year, and that does not include any adjustments to reverse the effects of any differences between those provisions and the provisions that would otherwise apply, constitutes the making of an irrevocable election under this division for that taxable year.

(2) Elections under prior versions of division (B)(1) of this section remain in effect for the taxable years to which they apply.

Sec. 5701.12. (A) The effective date to which this section refers is March 27, 2013, the effective date of this section as enacted by H.B. 510 of the 129th general assembly.

(B) Any reference in Title LVII to "consolidated reports of condition and income" or "call report" means the consolidated reports of condition and income as those reports existed on the effective date.

(C) Any reference in Title LVII to "FR Y-9" or "Y-9" means the FR Y-9 financial statements as those financial statements existed on the effective date.

(D) This section does not apply to any reference in Title LVII of the Revised Code to "consolidated reports of condition and income," "call report," "FR Y-9," or "Y-9" as of a date certain specifying the day, month, and year.

Sec. 5703.04. The tax commissioner shall have the following powers, duties, privileges, and immunities of the department of taxation:

(A) All powers whatsoever of an inquisitorial nature as provided by law, including, the right to inspect books, accounts, records, and memorandums, to examine persons under oath, to issue orders or subpoenas for the production of books, accounts, papers, records, documents, and testimony, to take depositions, to apply to a court for attachment proceedings as for contempt, to approve vouchers for the fees of officers and witnesses, and to administer oaths; provided that the powers referred to in this division of this section shall be exercised by the board of tax appeals or by the tax commissioner only in connection with the performance of the duties respectively assigned to each under sections 5703.01 to 5703.09, 5703.14, and 5703.15 of the Revised Code;

(B) Appoint agents and prescribe their powers and duties as provided by section 5703.17 of the Revised Code;

(C) Confer and meet with officers of other states and officers of the United States on any matters pertaining to their respective official duties as provided by law;

(D) The immunity provided by section 5703.38 of the Revised Code;

(E) The rights of action provided by section 5703.39 of the Revised Code;

(F) The duties and powers mentioned in section 5703.41 of the Revised Code.

Sec. 5703.211. (A) The tax commissioner shall adopt rules under Chapter 119. of the Revised Code that, except as otherwise provided in division (B) of this section, require that any search of any of the databases of the department of taxation be tracked so that administrators of the database or investigators can identify each account holder who conducted a search of the database.

(B) The rules adopted under division (A) of this section shall not require the tracking of any search of any of the databases of the department conducted by an account holder in any of the

following circumstances:

(1) The search occurs as a result of research performed for official agency purposes, routine office procedures, or incidental contact with the information, unless the search is specifically directed toward a ~~specifially~~ specifically named individual or a group of specifically named individuals.

(2) The search is for information about an individual, and it is performed as a result of a request by that individual for information about that individual.

Sec. 5703.54. (A) A taxpayer aggrieved by an action or omission of an officer or employee of the department of taxation may bring an action for damages in the court of claims pursuant to Chapter ~~2734.~~ 2743. of the Revised Code, if all of the following apply:

(1) In the action or omission the officer or employee frivolously disregards a provision of Chapter 5711., 5733., 5739., 5741., or 5747. of the Revised Code or a rule of the tax commissioner adopted under authority of one of those chapters;

(2) The action or omission occurred with respect to an audit or assessment and the review and collection proceedings connected with the audit or assessment;

(3) The officer or employee did not act manifestly outside the scope of the officer's or employee's office or employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner.

(B) In any action brought under division (A) of this section, upon a finding of liability on the part of the state, the state shall be liable to the taxpayer in an amount equal to the sum of the following:

(1) Compensatory damages sustained by the taxpayer as a result of the action or omission by the department's officer or employee;

(2) Reasonable costs of litigation and attorneys fees sustained by the taxpayer.

(C) In the awarding of damages under division (B) of this section, the court shall take into account the negligent actions or omissions, if any, on the part of the taxpayer that contributed to the damages, but shall not be bound by the provisions of sections 2315.32 to 2315.36 of the Revised Code.

(D) Whenever it appears to the court that a taxpayer's conduct in the proceedings brought under division (A) of this section is frivolous, the court may impose a penalty against the taxpayer in an amount not to exceed ten thousand dollars which shall be paid to the general revenue fund of the state.

(E)(1) Division (A) of this section does not apply to advisory opinions or other informational functions of an officer or employee of the department.

(2) Division (A) of this section does not authorize a taxpayer to bring an action for damages based on an action or omission of a county auditor or an employee of a county auditor.

(F) As used in this section, "frivolous" means that the conduct of the commissioner, or of the taxpayer or the taxpayer's counsel of record satisfies either of the following:

(1) It obviously serves merely to harass or maliciously injure the state or its employees or officers if referring to the conduct of a taxpayer, or to harass or maliciously injure the taxpayer if referring to the conduct of the tax commissioner;

(2) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

Sec. 5703.94. (A) As used in this section:

(1) "Declared disaster" means an event for which a disaster declaration has been issued.

(2) "Disaster declaration" means a declaration issued by the president of the United States or the governor of this state that an emergency exists.

(3) "Disaster response period" means the period that begins on the tenth day preceding the day on which a disaster declaration is issued through the sixtieth day following the day that the disaster declaration expires or is rescinded.

(4) "Disaster work" means both of the following:

(a) Repairing, renovating, installing, or constructing critical infrastructure damaged or destroyed by the declared disaster, or other business activities related to that critical infrastructure;

(b) Activities conducted in preparation for any activity described in division (A)(4)(a) of this section.

(5) "Critical infrastructure" means property and equipment owned or used by a qualifying owner or user to provide service to more than one customer, including related support facilities such as buildings, offices, power lines, cable lines, poles, communication lines, and structures.

(6) "Qualifying owner or user" means a public utility, commercial mobile radio service provider, cable service provider, or video service provider.

(7) "Public utility" has the same meaning as in section 4905.02 of the Revised Code, without regard to the exclusions from that definition prescribed in divisions (A)(1) to (5) of that section.

(8) "Commercial mobile radio service provider" means a person providing commercial mobile service as defined in 47 U.S.C. 332(d).

(9) "Cable service provider" and "video service provider" have the same meanings as in section 1332.21 of the Revised Code.

(10) "Out-of-state disaster business" means a person that does all of the following or to which apply all of the following:

(a) Receives a qualifying solicitation;

(b) Conducts disaster work in this state during a disaster response period;

(c) Is not subject to taxation under Chapter 5747. or 5751. of the Revised Code on any basis other than such disaster work during the calendar year preceding the year in which the disaster response period begins or is subject to such taxation during that year solely because the person is a related member of another person.

(11) "Out-of-state employee" means an individual who performs no work in this state, except disaster work during a disaster response period, from the first day of the preceding calendar year to the date on which the disaster response period begins.

(12) "Related member" has the same meaning as in section 5733.042 of the Revised Code without regard to division (B) of that section.

(13) "Qualifying solicitation" means a written solicitation or request from the state, a county, municipal corporation, or township, or a qualifying user or owner of critical infrastructure soliciting or requesting the assistance of a person to perform disaster work in this state.

(14) "Qualifying employee" means one of the following:

(a) An out-of-state employee performing disaster work in this state during a disaster response period whose employer receives a qualifying solicitation to perform such work;

(b) An out-of-state employee performing disaster work in this state on critical infrastructure owned or used by the employee's employer during a disaster response period, provided that employer is a qualifying user or owner.

(B) An out-of-state disaster business or qualifying employee shall qualify for all of the following, as applicable:

(1) The exemption authorized in division (C)(20) of section 718.01, the exemption authorized in division (C)(10) of section 5741.02, the deduction authorized in division (A)~~(33)~~ (30) of section 5747.01, and the exclusion authorized in division (F)(2)(ll) of section 5751.01 of the Revised Code;

(2) An exemption from any requirement to file a document or application with or to remit a fee to the secretary of state as a condition precedent to engaging in business in this state, in accordance with section 1701.041 of the Revised Code;

(3) An exemption from the requirements of Chapters 4121., 4123., and 4141. of the Revised Code, in accordance with division (A)(2) of section 4123.01 and section 4141.42 of the Revised Code;

(4) An exemption from the requirement to obtain a state or local occupational license or other authorization, in accordance with section 4799.04 of the Revised Code.

(C)(1) Upon the request of the tax commissioner, an out-of-state disaster business shall provide the following information to the commissioner:

(a) The name of the out-of-state disaster business and the address of its principal place of business;

(b) The business' federal tax identification number;

(c) A copy of the qualifying solicitation received by the business;

(d) The dates that the out-of-state disaster business and each of the business' out-of-state employees performing disaster work in this state during a disaster response period began performing disaster work in this state during that period;

(e) The name and social security number of each of the out-of-state disaster business' out-of-state employees performing disaster work in this state during a disaster response period;

(f) The name of any person of which the out-of-state disaster business is a related member, provided that person is subject to taxation under Chapter 5747. or 5751. of the Revised Code during the calendar year preceding the year in which the disaster response period begins;

(g) Any other information required by the tax commissioner.

(2) Upon the request of the tax commissioner, the employer of a qualifying employee shall provide the following information to the commissioner:

(a) The employer's name and the address of its principal place of business;

(b) The employer's federal tax identification number;

(c) For the employer of a qualifying employee described in division (A)(14)(a) of this section, a copy of the qualifying solicitation received by the employer;

(d) The date each of the employer's out-of-state employees performing disaster work in this state during a disaster response period began performing disaster work in this state during that period;

(e) The name and social security number of each of the employer's out-of-state employees performing disaster work in this state during a disaster response period;

(f) Any other information required by the tax commissioner.

(3) If the commissioner makes a request under division (C)(1) or (2) of this section, the out-of-state disaster business or employer shall submit information described in that division to the commissioner not later than thirty days from the date the disaster response period terminates or thirty days after the business or employer receives the request, whichever is later.

(D) The department of taxation may adopt rules necessary to administer this section.

Sec. 5703.95. (A) As used in this section, "tax expenditure" has the same meaning as in section 5703.48 of the Revised Code.

(B) There is hereby created the tax expenditure review committee, consisting of seven members, composed of the following:

(1) Three members of the house of representatives appointed by the speaker of the house of representatives in consultation with the minority leader of the house of representatives. Members described in division (B)(1) of this section shall not all be members of the same party and should be members of the house of representatives committee that deals primarily with tax legislation;

(2) Three members of the senate appointed by the president of the senate in consultation with the minority leader of the senate. Members described in division (B)(2) of this section shall not all be members of the same party and should be members of the senate committee that deals primarily with tax legislation;

(3) The tax commissioner or the tax commissioner's designee. The member described in division (B)(3) of this section shall be a nonvoting member.

The speaker of the house of representatives and the president of the senate shall make initial appointments to the committee not later than thirty days ~~following the effective date of the enactment of this section~~ after March 21, 2017. Thereafter, the terms of the office for appointed members shall be the same as the term of each general assembly. Members may be reappointed, provided the member continues to meet all other eligibility requirements. Vacancies shall be filled in the manner provided for original appointments. Any member appointed to fill a vacancy before the expiration of the term for which the predecessor was appointed shall hold office as a member for the remainder of that term. Appointed members of the committee serve at the pleasure of the member's appointing authority and may be removed only by the appointing authority.

(C) The tax expenditure review committee shall hold its first meeting within ninety days after ~~the effective date of the enactment of this section~~ March 21, 2017. At the first meeting, the members shall elect a chairperson, who shall be one of the members described in division (B)(1) or (2) of this section. Thereafter, the committee shall meet at least once during the first year of each fiscal biennium to review existing tax expenditures pursuant to division (D) of this section, provided the committee shall hold, for any such expenditure, at least one meeting at which a person may present to the committee evidence or testimony related to that expenditure. Any person may submit to the chairperson a request that the committee meet to accept evidence or testimony on a tax expenditure. The committee is a public body for the purposes of section 121.22 of the Revised Code.

The chairperson of the committee shall serve until the thirty-first day of December of each even-numbered year. Thereafter, members shall elect a new chairperson. If the preceding chairperson was a member described in division (B)(1) of this section, the new chairperson shall be a member described in division (B)(2) of this section. If the preceding chairperson was a member described in

division (B)(2) of this section, the new chairperson shall be a member described in division (B)(1) of this section.

A vacancy on the committee does not impair the right of the other members to exercise all the functions of the committee. The presence of a majority of the voting members of the committee constitutes a quorum for the conduct of business of the committee. The concurrence of at least a majority of the voting members of the committee is necessary for any action to be taken by the committee.

Upon the committee's request, the department of taxation, development services agency, office of budget and management, or other state agency shall provide any information in its possession that the committee requires to perform its duties.

The staff of the legislative service commission shall assist the committee as directed by the committee.

(D) The committee shall establish a schedule for review for each tax expenditure so that each expenditure is reviewed at least once every eight years. The schedule may provide for the review of each tax expenditure in the order the expenditures were enacted or modified, beginning with the least recently enacted or modified tax expenditure. Alternatively, the review schedule may group tax expenditures by the individuals or industries benefiting from the expenditures, the objectives of each expenditure, or the policy rationale of each expenditure. In its review, the committee shall make recommendations as to whether each tax expenditure should be continued without modification, modified, scheduled for further review at a future date to consider repealing the expenditure, or repealed outright. For each expenditure reviewed, the committee may recommend accountability standards for the future review of the expenditure. The committee may consider, when reviewing a tax expenditure, any of the relevant factors described in division (E) of this section.

(E) In conducting reviews pursuant to division (D) of this section, the committee may consider the following factors:

(1) The number and classes of persons, organizations, businesses, or types of industries that would receive the direct benefit or consequences of the tax expenditure;

(2) The fiscal impact of the tax expenditure on state and local taxing authorities, including any past fiscal effects and expected future fiscal impacts of the tax expenditure in the following eight-year period;

(3) Public policy objectives that might support the tax expenditure. In researching such objectives, the committee may consider the expenditure's legislative history, the tax expenditure's sponsor's intent in proposing the tax expenditure, or the extent to which the tax expenditure encourages or would encourage business growth or relocation into the state, promotes or would promote growth or retention of high-wage jobs in the state, or aids or would aid community stabilization.

(4) Whether the tax expenditure successfully accomplishes any of the objectives identified in division (E)(3) of this section;

(5) Whether the objectives identified in division (E)(3) of this section would or could have been accomplished successfully in the absence of the tax expenditure or with less cost to the state or local governments;

(6) Whether the objectives identified in division (E)(3) of this section could have been

accomplished successfully through a program that requires legislative appropriations for funding;

(7) The extent to which the tax expenditure may provide unintended benefits to an individual, organization, or industry other than those the general assembly or sponsor intended or creates an unfair competitive advantage for its recipient with respect to other businesses in the state;

(8) The extent to which terminating the tax expenditure may have negative effects on taxpayers that currently benefit from the tax expenditure;

(9) The extent to which terminating the tax expenditure may have negative or positive effects on the state's employment and economy;

(10) 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.

(F) The committee shall prepare a report of its determinations under division (D) of this section and, not later than the first day of July of each even-numbered year, submit a copy of the report to the governor, the speaker of the house of representatives, the president of the senate, the minority leader of the house of representatives, and the minority leader of the senate. The first report shall be submitted either in ~~the year of the effective date of this section or in the first even-numbered year thereafter~~ 2017 or 2018. If the committee maintains a web site, the committee shall cause a copy of the report to be posted on the web site in a form enabling access to the report by the public within thirty days after the report is submitted under this division. If the committee does not maintain a web site, the committee shall request that the president of the senate and the speaker of the house of representatives cause the report to be posted on the web site of the general assembly.

(G) Any bill introduced in the house of representatives or the senate that proposes to enact or modify one or more tax expenditures should include a statement explaining the objectives of the tax expenditure or its modification and the sponsor's intent in proposing the tax expenditure or its modification.

Sec. 5705.03. (A) The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47 of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.

(B)(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state all of the following:

(a) The purpose of the tax;

(b) Whether the tax is an additional levy, a renewal or a replacement of an existing tax, or a renewal or replacement of an existing tax with an increase or a decrease;

(c) The section of the Revised Code authorizing submission of the question of the tax;

(d) The term of years of the tax or if the tax is for a continuing period of time;

(e) That the tax is to be levied upon the entire territory of the subdivision or, if authorized by the Revised Code, a description of the portion of the territory of the subdivision in which the tax is to be levied;

(f) The date of the election at which the question of the tax shall appear on the ballot;

(g) That the ballot measure shall be submitted to the entire territory of the subdivision or, if authorized by the Revised Code, a description of the portion of the territory of the subdivision to which the ballot measure shall be submitted;

(h) The tax year in which the tax will first be levied and the calendar year in which the tax will first be collected;

(i) Each such county in which the subdivision has territory.

If a subdivision is located in more than one county, the county auditor shall obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county. The county auditor shall issue the certification to the taxing authority within ten days after receiving the taxing authority's resolution or ordinance requesting it.

(2) ~~When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.~~

~~(3)~~ Upon receiving the certification from the county auditor, the taxing authority may adopt a resolution or ordinance stating the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor, and that the taxing authority will proceed with the submission of the question of the tax to electors. The taxing authority shall certify this resolution or ordinance, a copy of the county auditor's certification, and the resolution or ordinance the taxing authority adopted under division (B)(1) of this section to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question. The county board of elections shall not submit the question of the tax to electors unless a copy of the county auditor's certification accompanies the resolutions or ordinances the taxing authority certifies to the board. Before requesting a taxing authority to submit a tax levy, any agency or authority authorized to make that request shall first request the certification from the county auditor provided under this section.

~~(4)~~ (3) This division is supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the ten-mill limitation, including sections 133.18 and 5705.195 of the Revised Code.

(C) All taxes levied on property shall be extended on the tax list and duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be deposited in its treasury to the credit of the appropriate

fund.

Sec. 5705.13. (A) A taxing authority of a subdivision, by resolution or ordinance, may establish reserve balance accounts to accumulate currently available resources for the following purposes:

(1) To stabilize subdivision budgets against cyclical changes in revenues and expenditures;

(2) Except as otherwise provided by this section, to provide for the payment of claims and deductibles under an individual or joint self-insurance program for the subdivision, if the subdivision is permitted by law to establish such a program;

(3) To provide for the payment of claims, assessments, and deductibles under a self-insurance program, individual retrospective ratings plan, group rating plan, group retrospective rating plan, medical only program, deductible plan, or large deductible plan for workers' compensation.

The ordinance or resolution establishing a reserve balance account shall state the purpose for which the account is established, the fund in which the account is to be established, and the total amount of money to be reserved in the account.

Not more than one reserve balance account may be established for each of the purposes permitted under divisions (A)(2) and (3) of this section. Money to the credit of a reserve balance account may be expended only for the purpose for which the account was established.

A reserve balance account established for the purpose described in division (A)(1) of this section may be established in the general fund or in one or more special funds for operating purposes of the subdivision. The amount of money to be reserved in such an account in any fiscal year shall not exceed five per cent of the revenue credited in the preceding fiscal year to the fund in which the account is established, or, in the case of a reserve balance account of a county or of a township, the greater of that amount or one-sixth of the expenditures during the preceding fiscal year from the fund in which the account is established. Subject to division ~~(G)~~ (F) of section 5705.29 of the Revised Code, any reserve balance in an account established under division (A)(1) of this section shall not be considered part of the unencumbered balance or revenue of the subdivision under division (A) of section 5705.35 or division (A)(1) of section 5705.36 of the Revised Code.

At any time, a taxing authority of a subdivision, by resolution or ordinance, may reduce or eliminate the reserve balance in a reserve balance account established for the purpose described in division (A)(1) of this section.

A reserve balance account established for the purpose described in division (A)(2) or (3) of this section shall be established in the general fund of the subdivision or by the establishment of a separate internal service fund established to account for the operation of an individual or joint self-insurance program described in division (A)(2) of this section or a workers' compensation program or plan described in division (A)(3) of this section, and shall be based on sound actuarial principles. The total amount of money in a reserve balance account for self-insurance may be expressed in dollars or as the amount determined to represent an adequate reserve according to sound actuarial principles.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a reserve balance account established under this division. If a reserve balance account is rescinded, money that has accumulated in the account shall be transferred to the fund or funds from which the money originally was transferred.

(B) A taxing authority of a subdivision, by resolution or ordinance, may establish a special

revenue fund for the purpose of accumulating resources for the payment of accumulated sick leave and vacation leave, and for payments in lieu of taking compensatory time off, upon the termination of employment or the retirement of officers and employees of the subdivision. The special revenue fund may also accumulate resources for payment of salaries during any fiscal year when the number of pay periods exceeds the usual and customary number of pay periods. Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority, by resolution or ordinance, may transfer money to the special revenue fund from any other fund of the subdivision from which such payments may lawfully be made. The taxing authority, by resolution or ordinance, may rescind a special revenue fund established under this division. If a special revenue fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

(C) A taxing authority of a subdivision, by resolution or ordinance, may establish a capital projects fund for the purpose of accumulating resources for the acquisition, construction, or improvement of fixed assets of the subdivision. For the purposes of this section, "fixed assets" includes motor vehicles. More than one capital projects fund may be established and may exist at any time. The ordinance or resolution shall identify the source of the money to be used to acquire, construct, or improve the fixed assets identified in the resolution or ordinance, the amount of money to be accumulated for that purpose, the period of time over which that amount is to be accumulated, and the fixed assets that the taxing authority intends to acquire, construct, or improve with the money to be accumulated in the fund.

A taxing authority of a subdivision shall not accumulate money in a capital projects fund for more than ten years after the resolution or ordinance establishing the fund is adopted. If the subdivision has not entered into a contract for the acquisition, construction, or improvement of fixed assets for which money was accumulated in such a fund before the end of that ten-year period, the fiscal officer of the subdivision shall transfer all money in the fund to the fund or funds from which that money originally was transferred or the fund that originally was intended to receive the money.

A taxing authority of a subdivision, by resolution or ordinance, may rescind a capital projects fund. If a capital projects fund is rescinded, money that has accumulated in the fund shall be transferred to the fund or funds from which the money originally was transferred.

Notwithstanding sections 5705.14, 5705.15, and 5705.16 of the Revised Code, the taxing authority of a subdivision, by resolution or ordinance, may transfer money to the capital projects fund from any other fund of the subdivision that may lawfully be used for the purpose of acquiring, constructing, or improving the fixed assets identified in the resolution or ordinance.

Sec. 5705.19. This section does not apply to school districts, county school financing districts, or lake facilities authorities.

The taxing authority of any subdivision at any time and in any year, by vote of two-thirds of all the members of the taxing authority, may declare by resolution and certify the resolution to the board of elections not less than ninety days before the election upon which it will be voted that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision and that it is necessary to levy a tax in excess of that limitation for any of the following purposes:

(A) For current expenses of the subdivision, except that the total levy for current expenses of

a detention facility district or district organized under section 2151.65 of the Revised Code shall not exceed two mills and that the total levy for current expenses of a combined district organized under sections 2151.65 and 2152.41 of the Revised Code shall not exceed four mills;

(B) For the payment of debt charges on certain described bonds, notes, or certificates of indebtedness of the subdivision issued subsequent to January 1, 1925;

(C) For the debt charges on all bonds, notes, and certificates of indebtedness issued and authorized to be issued prior to January 1, 1925;

(D) For a public library of, or supported by, the subdivision under whatever law organized or authorized to be supported;

(E) For a municipal university, not to exceed two mills over the limitation of one mill prescribed in section 3349.13 of the Revised Code;

(F) For the construction or acquisition of any specific permanent improvement or class of improvements that the taxing authority of the subdivision may include in a single bond issue;

(G) For the general construction, reconstruction, resurfacing, and repair of streets, roads, and bridges in municipal corporations, counties, or townships;

(H) For parks and recreational purposes;

(I) For providing and maintaining fire apparatus, mechanical resuscitators, underwater rescue and recovery equipment, or other fire equipment and appliances, buildings and sites therefor, or sources of water supply and materials therefor, for the establishment and maintenance of lines of fire-alarm communications, for the payment of firefighting companies or permanent, part-time, or volunteer firefighting, emergency medical service, administrative, or communications personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.34 of the Revised Code, for the purchase of ambulance equipment, for the provision of ambulance, paramedic, or other emergency medical services operated by a fire department or firefighting company, or for the payment of other related costs;

(J) For providing and maintaining motor vehicles, communications, other equipment, buildings, and sites for such buildings used directly in the operation of a police department, for the payment of salaries of permanent or part-time police, communications, or administrative personnel to operate the same, including the payment of any employer contributions required for such personnel under section 145.48 or 742.33 of the Revised Code, for the payment of the costs incurred by townships as a result of contracts made with other political subdivisions in order to obtain police protection, for the provision of ambulance or emergency medical services operated by a police department, or for the payment of other related costs;

(K) For the maintenance and operation of a county home or detention facility;

(L) For community developmental disabilities programs and services pursuant to Chapter 5126. of the Revised Code, except that such levies shall be subject to the procedures and requirements of section 5705.222 of the Revised Code;

(M) For regional planning;

(N) For a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(O) For providing for flood defense, providing and maintaining a flood wall or pumps, and

other purposes to prevent floods;

(P) For maintaining and operating sewage disposal plants and facilities;

(Q) For the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, maintaining, or operating, or any combination of the foregoing, a county transit system pursuant to sections 306.01 to 306.13 of the Revised Code, or of making any payment to a board of county commissioners operating a transit system or a county transit board pursuant to section 306.06 of the Revised Code;

(R) For the subdivision's share of the cost of acquiring or constructing any schools, forestry camps, detention facilities, or other facilities, or any combination thereof, under section 2151.65 or 2152.41 of the Revised Code or both of those sections;

(S) For the prevention, control, and abatement of air pollution;

(T) For maintaining and operating cemeteries;

(U) For providing ambulance service, emergency medical service, or both;

(V) For providing for the collection and disposal of garbage or refuse, including yard waste;

(W) For the payment of the police officer employers' contribution or the firefighter employers' contribution required under sections 742.33 and 742.34 of the Revised Code;

(X) For the construction and maintenance of a drainage improvement pursuant to section 6131.52 of the Revised Code;

(Y) For providing or maintaining senior citizens services or facilities as authorized by section 307.694, 307.85, 505.70, or 505.706 or division (EE) of section 717.01 of the Revised Code;

(Z) For the provision and maintenance of zoological park services and facilities as authorized under section 307.76 of the Revised Code;

(AA) For the maintenance and operation of a free public museum of art, science, or history;

(BB) For the establishment and operation of a 9-1-1 system, as defined in section 128.01 of the Revised Code;

(CC) For the purpose of acquiring, rehabilitating, or developing rail property or rail service. As used in this division, "rail property" and "rail service" have the same meanings as in section 4981.01 of the Revised Code. This division applies only to a county, township, or municipal corporation.

(DD) For the purpose of acquiring property for, constructing, operating, and maintaining community centers as provided for in section 755.16 of the Revised Code;

(EE) For the creation and operation of an office or joint office of economic development, for any economic development purpose of the office, and to otherwise provide for the establishment and operation of a program of economic development pursuant to sections 307.07 and 307.64 of the Revised Code, or to the extent that the expenses of a county land reutilization corporation organized under Chapter 1724. of the Revised Code are found by the board of county commissioners to constitute the promotion of economic development, for the payment of such operations and expenses;

(FF) For the purpose of acquiring, establishing, constructing, improving, equipping, maintaining, or operating, or any combination of the foregoing, a township airport, landing field, or other air navigation facility pursuant to section 505.15 of the Revised Code;

(GG) For the payment of costs incurred by a township as a result of a contract made with a county pursuant to section 505.263 of the Revised Code in order to pay all or any part of the cost of

constructing, maintaining, repairing, or operating a water supply improvement;

(HH) For a board of township trustees to acquire, other than by appropriation, an ownership interest in land, water, or wetlands, or to restore or maintain land, water, or wetlands in which the board has an ownership interest, not for purposes of recreation, but for the purposes of protecting and preserving the natural, scenic, open, or wooded condition of the land, water, or wetlands against modification or encroachment resulting from occupation, development, or other use, which may be styled as protecting or preserving "greenspace" in the resolution, notice of election, or ballot form. Except as otherwise provided in this division, land is not acquired for purposes of recreation, even if the land is used for recreational purposes, so long as no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. Except as otherwise provided in this division, land that previously has been acquired in a township for these greenspace purposes may subsequently be used for recreational purposes if the board of township trustees adopts a resolution approving that use and no building, structure, or fixture used for recreational purposes is permanently attached or affixed to the land. The authorization to use greenspace land for recreational use does not apply to land located in a township that had a population, at the time it passed its first greenspace levy, of more than thirty-eight thousand within a county that had a population, at that time, of at least eight hundred sixty thousand.

(II) For the support by a county of a crime victim assistance program that is provided and maintained by a county agency or a private, nonprofit corporation or association under section 307.62 of the Revised Code;

(JJ) For any or all of the purposes set forth in divisions (I) and (J) of this section. This division applies only to a municipal corporation or a township.

(KK) For a countywide public safety communications system under section 307.63 of the Revised Code. This division applies only to counties.

(LL) For the support by a county of criminal justice services under section 307.45 of the Revised Code;

(MM) For the purpose of maintaining and operating a jail or other detention facility as defined in section 2921.01 of the Revised Code;

(NN) For purchasing, maintaining, or improving, or any combination of the foregoing, real estate on which to hold, and the operating expenses of, agricultural fairs operated by a county agricultural society or independent agricultural society under Chapter 1711. of the Revised Code. This division applies only to a county.

(OO) For constructing, rehabilitating, repairing, or maintaining sidewalks, walkways, trails, bicycle pathways, or similar improvements, or acquiring ownership interests in land necessary for the foregoing improvements;

(PP) For both of the purposes set forth in divisions (G) and (OO) of this section.

(QQ) For both of the purposes set forth in divisions (H) and (HH) of this section. This division applies only to a township.

(RR) For the legislative authority of a municipal corporation, board of county commissioners of a county, or board of township trustees of a township to acquire agricultural easements, as defined in section 5301.67 of the Revised Code, and to supervise and enforce the easements.

(SS) For both of the purposes set forth in divisions (BB) and (KK) of this section. This

division applies only to a county.

(TT) For the maintenance and operation of a facility that is organized in whole or in part to promote the sciences and natural history under section 307.761 of the Revised Code.

(UU) For the creation and operation of a county land reutilization corporation and for any programs or activities of the corporation found by the board of directors of the corporation to be consistent with the purposes for which the corporation is organized;

(VV) For construction and maintenance of improvements and expenses of soil and water conservation district programs under Chapter 940. of the Revised Code;

(WW) For the OSU extension fund created under section 3335.35 of the Revised Code for the purposes prescribed under section 3335.36 of the Revised Code for the benefit of the citizens of a county. This division applies only to a county.

(XX) For a municipal corporation that withdraws or proposes by resolution to withdraw from a regional transit authority under section 306.55 of the Revised Code to provide transportation services for the movement of persons within, from, or to the municipal corporation;

(YY) For any combination of the purposes specified in divisions (NN), (VV), and (WW) of this section. This division applies only to a county.

(ZZ) For any combination of the following purposes: the acquisition, construction, improvement, or maintenance of buildings, equipment, and supplies for police, firefighting, or emergency medical services; the construction, reconstruction, resurfacing, or repair of streets, roads, and bridges; or for general infrastructure projects. This division applies only to a township or municipal corporation.

(AAA) For any combination of the purposes specified in divisions (G), (K), (N), (O), (P), (X), (BB), and (MM) of this section, for the acquisition, construction or maintenance of county facilities, or for the acquisition of or improvements to land. This division applies only to a county.

The resolution shall be confined to the purpose or purposes described in one division of this section, to which the revenue derived therefrom shall be applied. The existence in any other division of this section of authority to levy a tax for any part or all of the same purpose or purposes does not preclude the use of such revenues for any part of the purpose or purposes of the division under which the resolution is adopted.

The resolution shall specify the amount of the increase in rate that it is necessary to levy, the purpose of that increase in rate, and the number of years during which the increase in rate shall be in effect, which may or may not include a levy upon the duplicate of the current year. The number of years may be any number not exceeding five, except as follows:

(1) When the additional rate is for the payment of debt charges, the increased rate shall be for the life of the indebtedness.

(2) When the additional rate is for any of the following, the increased rate shall be for a continuing period of time:

(a) For the current expenses for a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2151.65 and 2152.41 of the Revised Code;

(b) For providing a county's share of the cost of maintaining and operating schools, district detention facilities, forestry camps, or other facilities, or any combination thereof, established under

section 2151.65 or 2152.41 of the Revised Code or under both of those sections.

(3) When the additional rate is for either of the following, the increased rate may be for a continuing period of time:

(a) For the purposes set forth in division (I), (J), (U), or (KK) of this section;

(b) For the maintenance and operation of a joint recreation district.

(4) When the increase is for the purpose or purposes set forth in division (D), (G), (H), (T), (Z), (CC), or (PP) of this section, the tax levy may be for any specified number of years or for a continuing period of time, as set forth in the resolution.

(5) When the increase is for the purpose set forth in division (ZZ) or (AAA) of this section, the tax levy may be for any number of years not exceeding ten.

A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may be reduced pursuant to section 5705.261 or 5705.31 of the Revised Code. A levy for one of the purposes set forth in division (G), (I), (J), or (U) of this section may also be terminated or permanently reduced by the taxing authority if it adopts a resolution stating that the continuance of the levy is unnecessary and the levy shall be terminated or that the millage is excessive and the levy shall be decreased by a designated amount.

A resolution of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under both sections 2151.65 and 2152.41 of the Revised Code may include both current expenses and other purposes, provided that the resolution shall apportion the annual rate of levy between the current expenses and the other purpose or purposes. The apportionment need not be the same for each year of the levy, but the respective portions of the rate actually levied each year for the current expenses and the other purpose or purposes shall be limited by the apportionment.

Whenever a board of county commissioners, acting either as the taxing authority of its county or as the taxing authority of a sewer district or subdistrict created under Chapter 6117. of the Revised Code, by resolution declares it necessary to levy a tax in excess of the ten-mill limitation for the purpose of constructing, improving, or extending sewage disposal plants or sewage systems, the tax may be in effect for any number of years not exceeding twenty, and the proceeds of the tax, notwithstanding the general provisions of this section, may be used to pay debt charges on any obligations issued and outstanding on behalf of the subdivision for the purposes enumerated in this paragraph, provided that any such obligations have been specifically described in the resolution.

A resolution adopted by the legislative authority of a municipal corporation that is for the purpose in division (XX) of this section may be combined with the purpose provided in section 306.55 of the Revised Code, by vote of two-thirds of all members of the legislative authority. The legislative authority may certify the resolution to the board of elections as a combined question. The question appearing on the ballot shall be as provided in section 5705.252 of the Revised Code.

A levy for the purpose set forth in division (BB) of this section may be imposed in all or a portion of the territory of a subdivision. If the 9-1-1 system to be established and operated with levy funds excludes territory located within the subdivision, the resolution adopted under this section, or a resolution proposing to renew such a levy that was imposed in all of the territory of the subdivision, may describe the area served or to be served by the system and specify that the proposed tax would be imposed only in the areas receiving or to receive the service. Upon passage of such a resolution,

the board of elections shall submit the question of the tax levy only to those electors residing in the area or areas in which the tax would be imposed. If the 9-1-1 system would serve the entire subdivision, the resolution shall not exclude territory from the tax levy.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution is necessary other than that provided for in the notice of election.

When the electors of a subdivision or, in the case of a qualifying library levy for the support of a library association or private corporation, the electors of the association library district or, in the case of a 9-1-1 system levy serving only a portion of the territory of a subdivision, the electors of the portion of the subdivision in which the levy would be imposed have approved a tax levy under this section, the taxing authority of the subdivision may anticipate a fraction of the proceeds of the levy and issue anticipation notes in accordance with section 5705.191 or 5705.193 of the Revised Code.

Sec. 5705.195. Within five days after the resolution is certified to the county auditor as provided by section 5705.194 of the Revised Code, the auditor shall calculate and certify to the taxing authority the annual levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, throughout the life of the levy which will be required to produce the annual amount set forth in the resolution assuming that the amount of the tax list of such subdivision remains throughout the life of the levy the same as the amount of the tax list for the current year, and if this is not determined, the estimated amount submitted by the auditor to the county budget commission. ~~When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.~~

Upon receiving the certification from the county auditor, if the taxing authority desires to proceed with the submission of the question it shall, not less than ninety days before the day of such election, certify its resolution, together with the amount of the average tax levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the auditor, and the number of years the levy is to run to the board of elections of the county which shall prepare the ballots and make other necessary arrangements for the submission of the question to the voters of the subdivision.

Sec. 5705.213. (A)(1) The board of education of any school district, at any time and by a vote of two-thirds of all of its members, may declare by resolution that the amount of taxes that may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district and that it is necessary to levy a tax in excess of that limitation for current expenses. The resolution also shall state that the question of the additional tax shall be submitted to the electors of the school district at a special election. The resolution shall specify, for each year the levy is in effect, the amount of money that the levy is proposed to raise, which may, for years after the first year the levy is made, be expressed in terms of a dollar or percentage increase over the prior year's amount. The resolution also shall specify that the purpose of the levy is for current expenses, the number of years during which the tax shall be in effect which may be for any number of years not exceeding ten, and the year in which the tax first is proposed to be levied. The resolution shall specify the date of holding the special election, which shall not be earlier than ninety-five days after the adoption and certification of the resolution to the county auditor

and not earlier than ninety days after certification to the board of elections. The date of the election shall be consistent with the requirements of section 3501.01 of the Revised Code.

(2) The board of education, by a vote of two-thirds of all of its members, may adopt a resolution proposing to renew a tax levied under division (A)(1) of this section. Such a resolution shall provide for levying a tax and specify all of the following:

(a) That the tax shall be called and designated on the ballot as a renewal levy;

(b) The amount of the renewal tax, which shall be no more than the amount of tax levied during the last year the tax being renewed is authorized to be in effect;

(c) The number of years, not to exceed ten, that the renewal tax will be levied, or that it will be levied for a continuing period of time;

(d) That the purpose of the renewal levy is for current expenses;

(e) Subject to the certification and notification requirements of section 5705.251 of the Revised Code, that the question of the renewal levy shall be submitted to the electors of the school district at the general election held during the last year the tax being renewed may be extended on the real and public utility property tax list and duplicate or at a special election held during the ensuing year.

(3) A resolution adopted under division (A)(1) or (2) of this section shall go into immediate effect upon its adoption and no publication of the resolution is necessary other than that provided for in the notice of election. Immediately after its adoption, a copy of the resolution shall be certified to the county auditor of the proper county, who shall, within five days, calculate and certify to the board of education the estimated levy, for the first year, and for each subsequent year for which the tax is proposed to be in effect. The estimates shall be made both in mills for each dollar of valuation, and in dollars and cents for each one hundred dollars of valuation. In making the estimates, the auditor shall assume that the amount of the tax list remains throughout the life of the levy, the same as the tax list for the current year. If the tax list for the current year is not determined, the auditor shall base the auditor's estimates on the estimated amount of the tax list for the current year as submitted to the county budget commission.

If the board desires to proceed with the submission of the question, it shall certify its resolution, with the estimated tax levy expressed in mills and dollars and cents per hundred dollars of valuation for each year that the tax is proposed to be in effect, to the board of elections of the proper county in the manner provided by division (A) of section 5705.251 of the Revised Code. Section 5705.251 of the Revised Code shall govern the arrangements for the submission of the question and other matters concerning the election to which that section refers. The election shall be held on the date specified in the resolution. If a majority of the electors voting on the question so submitted in an election vote in favor of the tax, and if the tax is authorized to be levied for the current year, the board of education immediately may make the additional levy necessary to raise the amount specified in the resolution or a lesser amount for the purpose stated in the resolution.

(4) The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 of the Revised Code.

(B) Notwithstanding ~~sections~~ section 133.30 ~~and 133.301~~ of the Revised Code, after the approval of a tax to be levied in the current or the succeeding year and prior to the time when the first tax collection from that levy can be made, the board of education may anticipate a fraction of the

proceeds of the levy and issue anticipation notes in an amount not to exceed fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy. The notes shall be sold as provided in Chapter 133. of the Revised Code. If anticipation notes are issued, they shall mature serially and in substantially equal amounts during each year over a period not to exceed five years; and the amount necessary to pay the interest and principal as the anticipation notes mature shall be deemed appropriated for those purposes from the levy, and appropriations from the levy by the board of education shall be limited each fiscal year to the balance available in excess of that amount.

If the auditor of state has certified a deficit pursuant to section 3313.483 of the Revised Code, the notes authorized under this section may be sold in accordance with Chapter 133. of the Revised Code, except that the board may sell the notes after providing a reasonable opportunity for competitive bidding.

Sec. 5705.252. (A) If the legislative authority of a municipal corporation adopts a resolution for the purposes provided in section 306.55 of the Revised Code and division (XX) of section 5705.19 of the Revised Code and certifies the resolution to the board of elections as a combined question, the question appearing on the ballot shall read:

"Shall the territory within the _____ (name of municipal corporation) be withdrawn from _____ (name of regional transit authority) and shall an additional tax be levied for the benefit of _____ (name of municipal corporation) _____ for the purpose of providing transportation services for the movement of persons within, from, or to the _____ (name of municipal corporation) at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (number of years the levy is to run)?"

(B) If the board of trustees of a township adopts a resolution for the purposes provided in sections 306.55 and 5705.72 of the Revised Code and certifies the resolution to the board of elections as a combined question, the question appearing on the ballot in the unincorporated area of the township shall read:

"Shall the territory within the unincorporated area of _____ (name of township) be withdrawn from _____ (name of regional transit authority) and shall an additional tax be levied for the benefit of the unincorporated area of _____ (name of township) for the purpose of providing transportation services for the movement of persons within, from, or to the unincorporated area of _____ (name of township) at a rate not exceeding _____ mills for each one dollar of valuation, which amounts to _____ (rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (number of years the levy is to run)?"

Sec. 5705.29. This section does not apply to a subdivision or taxing unit for which the county budget commission has waived the requirement to adopt a tax budget pursuant to section 5705.281 of the Revised Code. The tax budget shall present the following information in such detail as is prescribed by the auditor of state:

(A)(1) A statement of the necessary current operating expenses for the ensuing fiscal year for each department and division of the subdivision, classified as to personal services and other expenses, and the fund from which such expenditures are to be made. Except in the case of a school district, this estimate may include a contingent expense not designated for any particular purpose, and not to exceed three per cent of the total amount of appropriations for current expenses. In the

case of a school district, this estimate may include a contingent expense not designated for any particular purpose and not to exceed thirteen per cent of the total amount of appropriations for current expenses.

(2) A statement of the expenditures for the ensuing fiscal year necessary for permanent improvements, exclusive of any expense to be paid from bond issues, classified as to the improvements contemplated by the subdivision and the fund from which such expenditures are to be made;

(3) The amounts required for the payment of final judgments;

(4) A statement of expenditures for the ensuing fiscal year necessary for any purpose for which a special levy is authorized, and the fund from which such expenditures are to be made;

(5) Comparative statements, so far as possible, in parallel columns of corresponding items of expenditures for the current fiscal year and the two preceding fiscal years.

(B)(1) An estimate of receipts from other sources than the general property tax during the ensuing fiscal year, which shall include an estimate of unencumbered balances at the end of the current fiscal year, and the funds to which such estimated receipts are credited;

(2) The amount each fund requires from the general property tax, which shall be the difference between the contemplated expenditure from the fund and the estimated receipts, as provided in this section. The section of the Revised Code under which the tax is authorized shall be set forth.

(3) Comparative statements, so far as possible, in parallel columns of taxes and other revenues for the current fiscal year and the two preceding fiscal years.

(C)(1) The amount required for debt charges;

(2) The estimated receipts from sources other than the tax levy for payment of such debt charges, including the proceeds of refunding bonds to be issued to refund bonds maturing in the next succeeding fiscal year;

(3) The net amount for which a tax levy shall be made, classified as to bonds authorized and issued prior to January 1, 1922, and those authorized and issued subsequent to such date, and as to what portion of the levy will be within and what in excess of the ten-mill limitation.

(D) An estimate of amounts from taxes authorized to be levied in excess of the ten-mill limitation on the tax rate, and the fund to which such amounts will be credited, together with the sections of the Revised Code under which each such tax is exempted from all limitations on the tax rate.

(E)(1) A board of education may include in its budget for the fiscal year in which a levy proposed under section 5705.194, 5705.199, 5705.21, 5705.213, or 5705.219, a property tax levy proposed under section 5748.09, or the original levy under section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known as a voluntary contingency reserve balance, which shall not be greater than twenty-five per cent of the total amount of the levy estimated to be available for appropriation in such year.

(2) A board of education may include in its budget for the fiscal year following the year in which a levy proposed under section 5705.194, 5705.199, 5705.21, 5705.213, or 5705.219, a property tax levy proposed under section 5748.09, or the original levy under section 5705.212 of the Revised Code is first extended on the tax list and duplicate an estimate of expenditures to be known

as a voluntary contingency reserve balance, which shall not be greater than twenty per cent of the amount of the levy estimated to be available for appropriation in such year.

(3) Except as provided in division (E)(4) of this section, the full amount of any reserve balance the board includes in its budget shall be retained by the county auditor and county treasurer out of the first semiannual settlement of taxes until the beginning of the next succeeding fiscal year, and thereupon, with the depository interest apportioned thereto, it shall be turned over to the board of education, to be used for the purposes of such fiscal year.

(4) A board of education, by a two-thirds vote of all members of the board, may appropriate any amount withheld as a voluntary contingency reserve balance during the fiscal year for any lawful purpose, provided that prior to such appropriation the board of education has authorized the expenditure of all amounts appropriated for contingencies under section 5705.40 of the Revised Code. Upon request by the board of education, the county auditor shall draw a warrant on the district's account in the county treasury payable to the district in the amount requested.

(F)~~(1) A board of education may include a spending reserve in its budget for fiscal years ending on or before June 30, 2002. The spending reserve shall consist of an estimate of expenditures not to exceed the district's spending reserve balance. A district's spending reserve balance is the amount by which the designated percentage of the district's estimated personal property taxes to be settled during the calendar year in which the fiscal year ends exceeds the estimated amount of personal property taxes to be so settled and received by the district during that fiscal year. Moneys from a spending reserve shall be appropriated in accordance with section 133.301 of the Revised Code.~~

~~(2) For the purposes of computing a school district's spending reserve balance for a fiscal year, the designated percentage shall be as follows:~~

~~(G)~~ Except as otherwise provided in this division, the county budget commission shall not reduce the taxing authority of a subdivision as a result of the creation of a reserve balance account. Except as otherwise provided in this division, the county budget commission shall not consider the amount in a reserve balance account of a township, county, or municipal corporation as an unencumbered balance or as revenue for the purposes of division (E)(3) or (4) of section 5747.51 of the Revised Code. The county budget commission may require documentation of the reasonableness of the reserve balance held in any reserve balance account. The commission shall consider any amount in a reserve balance account that it determines to be unreasonable as unencumbered and as revenue for the purposes of section 5747.51 of the Revised Code and may take such amounts into consideration when determining whether to reduce the taxing authority of a subdivision.

Sec. 5705.315. With respect to annexations granted on or after ~~the effective date of this section~~ March 27, 2002, and during any tax year or years within which any territory annexed to a municipal corporation is part of a township, the minimum levy for the municipal corporation and township under section 5705.31 of the Revised Code shall not be diminished, except that in the annexed territory and only during those tax year or years, and in order to preserve the minimum levies of overlapping subdivisions under section 5705.31 of the Revised Code so that the full amount of taxes within the ten-mill limitation may be levied to the extent possible, the minimum levy of the municipal corporation or township shall be the lowest of the following amounts:

(A) An amount that when added to the minimum levies of the other overlapping subdivisions

equals ten mills;

(B) An amount equal to the minimum levy of the municipal corporation or township, provided the total minimum levy does not exceed ten mills.

The municipal corporation and the township may enter into an agreement to determine the municipal corporation's and the township's minimum levy under this section. If it cannot be determined what minimum levy is available to each and no agreement has been entered into by the municipal corporation and township, the municipal corporation and township shall each receive one-half of the millage available for use within the portion of the territory annexed to the municipal corporation that remains part of the township.

Sec. 5705.34. When the budget commission has completed its work with respect to a tax budget or other information required to be provided under section 5705.281 of the Revised Code, it shall certify its action to the taxing authority, together with an estimate by the county auditor of the rate of each tax necessary to be levied by the taxing authority within its subdivision, taxing unit, or, in the case of a qualifying library levy, within the library district or association library district, and what part thereof is in excess of, and what part within, the ten-mill tax limitation. The certification shall also indicate the date on which each tax levied by the taxing authority will expire.

If a taxing authority levies a tax for a fixed sum of money or to pay debt charges for the tax year for which the tax budget is prepared, and a payment on account of that tax is payable to the taxing authority for the tax year under section 5709.92 or 5709.93~~,~~ of the Revised Code, the county auditor, when estimating the rate at which the tax shall be levied in the current year, shall estimate the rate necessary to raise the required sum less the estimated amount of any such payments made for the tax year to a taxing unit for fixed-sum levies under those sections. The estimated rate shall be the rate of the levy that the budget commission certifies with its action under this section.

Each taxing authority, by ordinance or resolution, shall authorize the necessary tax levies and certify them to the county auditor before the first day of October in each year, or at such later date as is approved by the tax commissioner, except that the certification by the legislative authority of the city of Cincinnati or by a board of education shall be made by the first day of April or at such later date as is approved by the commissioner, and except that a township board of park commissioners that is appointed by the board of township trustees and oversees a township park district that contains only unincorporated territory shall authorize only those taxes approved by, and only at the rate approved by, the board of township trustees as required by division (C) of section 511.27 of the Revised Code. If the levying of a tax to be placed on the duplicate of the current year is approved by electors under sections 5705.01 to 5705.47 of the Revised Code; if the rate of a school district tax is increased due to the repeal of a school district income tax and property tax rate reduction at an election held pursuant to section 5748.04 of the Revised Code; or if refunding bonds to refund all or a part of the principal of bonds payable from a tax levy for the ensuing fiscal year are issued or sold and in the process of delivery, the budget commission shall reconsider and revise its action on the budget of the subdivision or school library district for whose benefit the tax is to be levied after the returns of such election are fully canvassed, or after the issuance or sale of such refunding bonds is certified to it.

Sec. 5705.35. (A) The certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in section 5705.34 of the Revised Code, shall show the various

funds of such subdivisions other than funds to be created by transfer and shall be filed by the county budget commission with such taxing authority on or before the first day of March in the case of school districts and the city of Cincinnati and on or before the first day of September in each year in the case of all other taxing authorities. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation, and on the debit side, the total appropriations that may be made therefrom. Subject to division ~~(G)~~ (F) of section 5705.29 of the Revised Code, any reserve balance in an account established under section 5705.13 of the Revised Code for the purpose described in division (A)(1) of that section, and the principal of a nonexpendable trust fund established under section 5705.131 of the Revised Code and any additions to principal arising from sources other than the reinvestment of investment earnings arising from that fund, are not unencumbered balances for the purposes of this section. The balance in a reserve balance account established under section 5705.132 of the Revised Code is not an unencumbered balance for the purposes of this division.

There shall be attached to the certification a summary, which shall be known as the "official certificate of estimated resources," that shall state the total estimated resources of each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer, and a statement of the amount of the total tax duplicate of the school district to be used in the collection of taxes for the following calendar year. Before the end of the fiscal year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget, if one was adopted, so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.

(B)~~(1) Except as otherwise provided in division (B)(2) of this section, revenues~~ Revenue from real property taxes scheduled to be settled on or before the tenth day of August and the fifteenth day of February of a fiscal year under divisions (A) and (C) of section 321.24 of the Revised Code~~, and revenue from taxes levied on personal property used in business scheduled to be settled on or before the thirty-first day of October and the thirtieth day of June of a fiscal year under divisions (B) and (D) of section 321.24 of the Revised Code~~ shall not be available for appropriation by a board of education prior to the fiscal year in which such latest scheduled settlement date occurs, except that moneys advanced to the treasurer of a board of education under division (A)(2)(b) of section 321.34 of the Revised Code shall be available for appropriation in the fiscal year in which they are paid to the treasurer under such section. If the date for any settlement of taxes is extended under division (E) of section 321.24 of the Revised Code, the latest date set forth in divisions (A) to (D) of that section shall be used to determine in which fiscal year the revenues are first available for appropriation.

~~(2) Revenues available for appropriation by a school district during a fiscal year may include amounts borrowed in that fiscal year under section 133.301 of the Revised Code in anticipation of the collection of taxes that are to be included in the settlements made under divisions (C) and (D) of section 321.24 of the Revised Code in the ensuing fiscal year.~~

Sec. 5705.36. (A)(1) On or about the first day of each fiscal year, the fiscal officer of each subdivision and other taxing unit shall certify to the county auditor the total amount from all sources

available for expenditures from each fund set up in the tax budget or, if adoption of a tax budget was waived under section 5705.281 of the Revised Code, from each fund created by or on behalf of the taxing authority. The amount certified shall include any unencumbered balances that existed at the end of the preceding year, excluding any of the following:

(a) Subject to division ~~(G)~~ (F) of section 5705.29 of the Revised Code, any reserve balance in an account established under section 5705.13 of the Revised Code for the purpose described in division (A)(1) of that section;

(b) The principal of a nonexpendable trust fund established under section 5705.131 of the Revised Code and any additions to principal arising from sources other than the reinvestment of investment earnings arising from that fund;

(c) The balance in a reserve balance account established under section 5705.132 of the Revised Code.

A school district's certification shall separately show the amount of any notes and unpaid and outstanding expenses on the preceding thirtieth day of June that are to be paid from property taxes that are to be settled during the current fiscal year under divisions (C) and (D) of section 321.24 of the Revised Code~~, and the amount of any spending reserve available for appropriation during the current fiscal year under section 133.301 of the Revised Code~~. The budget commission, taking into consideration the balances and revenues to be derived from taxation and other sources, shall revise its estimate of the amounts that will be credited to each fund from such sources, and shall certify to the taxing authority of each subdivision an amended official certificate of estimated resources.

(2) Subject to divisions (A)(3) and (4) of this section, upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater or less than the amount included in an official certificate, the fiscal officer may certify the amount of the deficiency or excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the deficiency or excess.

(3) Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be greater than the amount included in an official certificate and the legislative authority intends to appropriate and expend the excess revenue, the fiscal officer shall certify the amount of the excess to the commission, and if the commission determines that the fiscal officer's certification is reasonable, the commission shall certify an amended official certificate reflecting the excess.

(4) Upon a determination by the fiscal officer of a subdivision that the revenue to be collected by the subdivision will be less than the amount included in an official certificate and that the amount of the deficiency will reduce available resources below the level of current appropriations, the fiscal officer shall certify the amount of the deficiency to the commission, and the commission shall certify an amended certificate reflecting the deficiency.

(5) The total appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation.

(B) At the time of settlement of taxes against which notes have been issued under ~~section~~

~~133.301 or~~ division (D) of section 133.10 of the Revised Code and at the time a tax duplicate is delivered pursuant to section 319.28 or 319.29 of the Revised Code, the county auditor shall determine whether the total amount to be distributed to each school district from such settlement or duplicate, when combined with the amounts to be distributed from any subsequent settlement, will increase or decrease the amount available for appropriation during the current fiscal year from any fund. The county auditor shall certify this finding to the budget commission, which shall certify an amended official certificate reflecting the finding or certify to the school district that no amended certificate needs to be issued.

Sec. 5705.49. Wherever in the Revised Code the taxing ~~authorities~~ authority of any subdivision~~, as defined in section 5705.01 of the Revised Code, are~~ is authorized to levy taxes on the taxable property within a subdivision, or, in the case of a qualifying library levy, within a library district or association library district, such authority shall extend only to the levy of taxes on the taxable real and public utility property listed on general tax lists and duplicates provided for by section 319.28 of the Revised Code. Where the amount of indebtedness of any subdivision is limited by law with reference to the tax valuation or aggregate value of the property on the tax list and duplicate of such subdivision, such limitation shall be measured by the property listed on such general tax lists and duplicates in such subdivision.

Sec. 5709.201. (A) Except as provided in divisions (C)(4)(a) and (c) of section 5709.22 and division (F) of section 5709.25 of the Revised Code, a certificate issued under section 5709.21, 5709.31, 5709.46, or 6111.31 of the Revised Code that was valid and in effect on ~~the effective date of this section~~ June 26, 2003, shall continue in effect subject to the law as it existed before that ~~effective~~ date. Division (C)(4)(b) of section 5709.22 of the Revised Code does not apply to any certificate issued by the tax commissioner before July 1, 2003.

(B) Any applications pending on ~~the effective date of this section~~ June 26, 2003, for which a certificate had not been issued on or before that ~~effective~~ date under section 6111.31 of the Revised Code shall be transferred to the tax commissioner for further administering. Sections 5709.20 to 5709.27 of the Revised Code apply to such pending applications, excluding the requirement of section 5709.212 of the Revised Code that applicants must pay the fee.

(C) For applications pending on ~~the effective date of this section~~ June 26, 2003, division (D) of section 5709.25 of the Revised Code allowing the commissioner to assess any additional tax notwithstanding any other time limitations imposed by law on the denied portion of the applicant's claim applies only to tax periods that would otherwise be open to assessment on that ~~effective~~ date.

Sec. 5709.43. (A) A municipal corporation that grants a tax exemption under section 5709.40 of the Revised Code shall establish a municipal public improvement tax increment equivalent fund into which shall be deposited service payments in lieu of taxes distributed to the municipal corporation under section 5709.42 of the Revised Code. If the legislative authority of the municipal corporation has adopted an ordinance under division (C) of section 5709.40 of the Revised Code, the municipal corporation shall establish at least one account in that fund with respect to ordinances adopted under division (B) of that section, and one account with respect to each incentive district created in an ordinance adopted under division (C) of that section. If an ordinance adopted under division (C) of section 5709.40 of the Revised Code also authorizes the use of service payments for housing renovations within the district, the municipal corporation shall establish separate accounts

for the service payments designated for public infrastructure improvements and for the service payments authorized for the purpose of housing renovations. Money in an account of the municipal public improvement tax increment equivalent fund shall be used to finance the public infrastructure improvements designated in, or the housing renovations authorized by, the ordinance with respect to which the account is established; in the case of an account established with respect to an ordinance adopted under division (C) of that section, money in the account shall be used to finance the public infrastructure improvements designated, or the housing renovations authorized, for each incentive district created in the ordinance. Money in an account shall not be used to finance or support housing renovations that take place after the incentive district has expired. The municipal corporation also may deposit into any of those accounts municipal income tax revenue that has been designated by ordinance to finance the public infrastructure improvements and housing renovations.

(B) A municipal corporation may establish an urban redevelopment tax increment equivalent fund, by resolution or ordinance of its legislative authority, into which shall be deposited service payments in lieu of taxes distributed to the municipal corporation by the county treasurer as provided in section 5709.42 of the Revised Code for improvements exempt from taxation pursuant to an ordinance adopted under section 5709.41 of the Revised Code. Moneys deposited in the urban redevelopment tax increment equivalent fund shall be used for such purposes as are authorized in the resolution or ordinance establishing the fund. The municipal corporation also may deposit into the urban redevelopment tax increment equivalent fund municipal income tax revenue that has been dedicated to fund any of the purposes for which the fund is established.

(C)(1)(a) A municipal corporation may distribute money in the municipal public improvement tax increment equivalent fund or the urban redevelopment tax increment equivalent fund to any school district in which the exempt property is located, in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation, or use money in either or both funds to finance specific public improvements benefiting the school district. The resolution or ordinance establishing the fund shall set forth the percentage of such maximum amount that will be distributed to any affected school district or used to finance specific public improvements benefiting the school district.

(b) A municipal corporation also may distribute money in the municipal public improvement tax increment equivalent fund or the urban redevelopment tax increment equivalent fund as follows:

(i) To a board of county commissioners, in the amount that is owed to the board pursuant to division (E) of section 5709.40 of the Revised Code;

(ii) To a county in accordance with section 5709.913 of the Revised Code.

(2) Money from an account in a municipal public improvement tax increment equivalent fund or from an urban redevelopment tax increment equivalent fund may be distributed under division (C)(1)(b) of this section, regardless of the date a resolution or an ordinance was adopted under section 5709.40 or 5709.41 of the Revised Code that prompted the establishment of the account or the establishment of the urban redevelopment tax increment equivalent fund, even if the resolution or ordinance was adopted prior to ~~the effective date of this amendment~~ March 30, 2006.

(D) Any incidental surplus remaining in the municipal public improvement tax increment equivalent fund or an account of that fund, or in the urban redevelopment tax increment equivalent fund, upon dissolution of the account or fund shall be transferred to the general fund of the municipal

corporation.

Sec. 5709.48. (A) As used in this section:

(1) "Regional transportation improvement project" has the same meaning as in section 5595.01 of the Revised Code.

(2) "Improvements" means the increase in the assessed value of any real property that would first appear on the tax list and duplicate of real and public utility property after the effective date of the resolution adopted under this section were it not for the exemption granted by that resolution.

(B) For the purposes described in division (A) of section 5595.06 of the Revised Code, the governing board of a regional transportation improvement project that was undertaken pursuant to section 5595.02 of the Revised Code before ~~the effective date of the amendment of this section by S.B. 8 of the 132nd general assembly~~ March 23, 2018, may, by resolution, create a transportation financing district and declare improvements to parcels within the district to be a public purpose and exempt from taxation.

(C) A transportation financing district may include territory in more than one county as long as each such county is a participant in the regional transportation improvement project funded by the district. A district shall not include parcels used primarily for residential purposes. A district shall not include any parcel that is currently exempt from taxation under this section or section 5709.40, 5709.41, 5709.45, 5709.73, or 5709.77 of the Revised Code. The governing board may designate parcels within the boundaries of a district that are not to be included in the district. The governing board may designate noncontiguous parcels located outside the boundaries of the district that are to be included in the district.

The governing board may adopt more than one resolution under division (B) of this section. A single such resolution may create more than one transportation financing district.

(D) A resolution creating a transportation financing district shall specify all of the following:

(1) A description of the territory included in the district;

(2) The county treasurer's permanent parcel number associated with each parcel included in the district;

(3) The percentage of improvements to be exempted from taxation and the duration of the exemption, which shall not exceed the remaining number of years the cooperative agreement for the regional transportation improvement district, described under section 5595.03 of the Revised Code, is in effect;

(4) A plan for the district that describes the principal purposes and goals to be served by the district and explains how the use of service payments provided for by section 5709.49 of the Revised Code will economically benefit owners of property within the district.

(E)(1) Except as otherwise provided in divisions (E)(2) and (3) of this section, the governing board, before adopting a resolution under division (B) of this section, shall notify and obtain the approval of each subdivision and taxing unit that levies a property tax within the territory of the proposed transportation financing district. A subdivision or taxing unit's approval or disapproval of the proposed district shall be in the form of an ordinance or resolution. The governing board may negotiate an agreement with a subdivision or taxing unit providing for compensation equal in value to a percentage of the amount of taxes exempted or some other mutually agreeable compensation.

(2) A subdivision or taxing unit may adopt an ordinance or resolution waiving its right to

approve or receive notice of transportation financing districts proposed under this section. If a subdivision or taxing unit has adopted such an ordinance or resolution, the terms of that ordinance or resolution supersede the requirements of division (E)(1) of this section. The governing board may negotiate an agreement with a subdivision or taxing unit providing for some mutually agreeable compensation in exchange for the subdivision or taxing unit adopting such an ordinance or resolution. If a subdivision or taxing unit has adopted such an ordinance or resolution, it shall certify a copy to the governing board. If the subdivision or taxing unit rescinds such an ordinance or resolution, it shall certify notice of the rescission to the governing board.

(3) The governing board need not obtain the approval of a subdivision or taxing unit if the governing board agrees to compensate that subdivision or unit for the full amount of taxes exempted under the resolution creating the district.

(F) After complying with division (E) of this section, the governing board shall notify and obtain the approval of every real property owner whose property is included in the proposed transportation financing district.

(G)(1) Upon adopting a resolution creating a transportation financing district, the governing board shall send a copy of the resolution and documentation sufficient to prove that the requirements of divisions (E) and (F) of this section have been met to the director of development services. The director shall evaluate the resolution and documentation to determine if the governing board has fully complied with the requirements of this section. If the director approves the resolution, the director shall send notice of approval to the governing board. If the director does not approve the resolution, the director shall send a notice of denial to the governing board that includes the reason or reasons for the denial. If the director does not make a determination within ninety days after receiving a resolution under this section, the director is deemed to have approved the resolution. No resolution creating a transportation financing district is effective without actual or constructive approval by the director under this section.

(2) An exemption from taxation granted under this section commences with the tax year specified in the resolution so long as the year specified in the resolution commences after the effective date of the resolution. If the resolution specifies a year commencing before the effective date of the resolution or specifies no year whatsoever, the exemption commences with the tax year in which an exempted improvement first appears on the tax list and that commences after the effective date of the resolution.

(3) Except as otherwise provided in this division, the exemption ends on the date specified in the resolution as the date the improvement ceases to be a public purpose or the regional transportation improvement project funded by the service payments dissolves under section 5595.13 of the Revised Code, whichever occurs first. Exemptions shall be claimed and allowed in the same manner as in the case of other real property exemptions. If an exemption status changes during a year, the procedure for the apportionment of the taxes for that year is the same as in the case of other changes in tax exemption status during the year.

(H) The resolution creating a transportation financing district may be amended at any time by majority vote of the governing board and with the approval of the director of development services obtained in the same manner as approval of the original resolution.

Sec. 5709.53. (A) A solar, wind, or hydrothermal energy system on which construction or

installation is completed during the period from ~~the effective date of this section~~ August 14, 1979, through December 31, 1985, that meets the guidelines established under division (B) of section 1551.20 of the Revised Code is exempt from real property taxation.

(B) Any fixture or other real property included in an energy facility with an aggregate nameplate capacity of two hundred fifty kilowatts or less is exempt from taxation if construction or installation is completed on or after January 1, 2010.

As used in division (B) of this section, "energy facility" and "nameplate capacity" have the same meanings as in section 5727.01 of the Revised Code.

Sec. 5709.61. As used in sections 5709.61 to 5709.69 of the Revised Code:

(A) "Enterprise zone" or "zone" means any of the following:

(1) An area with a single continuous boundary designated in the manner set forth in section 5709.62 or 5709.63 of the Revised Code and certified by the director of development as having a population of at least four thousand according to the best and most recent data available to the director and having at least two of the following characteristics:

(a) It is located in a municipal corporation defined by the United States office of management and budget as a principal city of a metropolitan statistical area;

(b) It is located in a county designated as being in the "Appalachian region" under the "Appalachian Regional Development Act of 1965," 79 Stat. 5, 40 App. U.S.C.A. 403, as amended;

(c) Its average rate of unemployment, during the most recent twelve-month period for which data are available, is equal to at least one hundred twenty-five per cent of the average rate of unemployment for the state of Ohio for the same period;

(d) There is a prevalence of commercial or industrial structures in the area that are vacant or demolished, or are vacant and the taxes charged thereon are delinquent, and certification of the area as an enterprise zone would likely result in the reduction of the rate of vacant or demolished structures or the rate of tax delinquency in the area;

(e) The population of all census tracts in the area, according to the federal census of 2000, decreased by at least ten per cent between the years 1980 and 2000;

(f) At least fifty-one per cent of the residents of the area have incomes of less than eighty per cent of the median income of residents of the municipal corporation or municipal corporations in which the area is located, as determined in the same manner specified under section 119(b) of the "Housing and Community Development Act of 1974," 88 Stat. 633, 42 U.S.C. 5318, as amended;

(g) The area contains structures previously used for industrial purposes, but currently not so used due to age, obsolescence, deterioration, relocation of the former occupant's operations, or cessation of operations resulting from unfavorable economic conditions either generally or in a specific economic sector;

(h) It is located within one or more adjacent city, local, or exempted village school districts, the income-weighted tax capacity of each of which is less than seventy per cent of the average of the income-weighted tax capacity of all city, local, or exempted village school districts in the state according to the most recent data available to the director from the department of taxation.

The director of development shall adopt rules in accordance with Chapter 119. of the Revised Code establishing conditions constituting the characteristics described in divisions (A)(1)(d), (g), and (h) of this section.

If an area could not be certified as an enterprise zone unless it satisfied division (A)(1)(g) of this section, the legislative authority may enter into agreements in that zone under section 5709.62, 5709.63, or 5709.632 of the Revised Code only if such agreements result in the development of the facilities described in that division, the parcel of land on which such facilities are situated, or adjacent parcels. The director of development annually shall review all agreements in such zones to determine whether the agreements have resulted in such development; if the director determines that the agreements have not resulted in such development, the director immediately shall revoke certification of the zone and notify the legislative authority of such revocation. Any agreements entered into prior to revocation under this paragraph shall continue in effect for the period provided in the agreement.

(2) An area with a single continuous boundary designated in the manner set forth in section 5709.63 of the Revised Code and certified by the director of development as having all of the following characteristics:

(a) Being located within a county that contains a population of three hundred thousand or less;

(b) Having a population of at least one thousand according to the best and most recent data available to the director;

(c) Having at least two of the characteristics described in divisions (A)(1)(b) to (h) of this section.

(3) An area with a single continuous boundary designated in the manner set forth under division (A)(1) of section 5709.632 of the Revised Code and certified by the director of development as having a population of at least four thousand, or under division (A)(2) of that section and certified as having a population of at least one thousand, according to the best and most recent data available to the director.

(B) "Enterprise" means any form of business organization including, but not limited to, any partnership, sole proprietorship, or corporation, including an S corporation as defined in section 1361 of the Internal Revenue Code and any corporation that is majority ~~work-owned~~ worker-owned either directly through the ownership of stock or indirectly through participation in an employee stock ownership plan.

(C) "Facility" means an enterprise's place of business in a zone, including land, buildings, machinery, equipment, and other materials, except inventory, used in business. "Facility" includes land, buildings, machinery, production and station equipment, other equipment, and other materials, except inventory, used in business to generate electricity, provided that, for purposes of sections 5709.61 to 5709.69 of the Revised Code, the value of the property at such a facility shall be reduced by the value, if any, that is not apportioned under section 5727.15 of the Revised Code to the taxing district in which the facility is physically located. In the case of such a facility that is physically located in two adjacent taxing districts, the property located in each taxing district constitutes a separate facility.

"Facility" does not include any portion of an enterprise's place of business used primarily for making retail sales unless the place of business is located in an impacted city as defined in section 1728.01 of the Revised Code or the board of education of the city, local, or exempted village school district within the territory of which the place of business is located adopts a resolution waiving the

exclusion of retail facilities under section 5709.634 of the Revised Code.

(D) "Vacant facility" means a facility that has been vacant for at least ninety days immediately preceding the date on which an agreement is entered into under section 5709.62 or 5709.63 of the Revised Code.

(E) "Expand" means to make expenditures to add land, buildings, machinery, equipment, or other materials, except inventory, to a facility that equal at least ten per cent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

(F) "Renovate" means to make expenditures to alter or repair a facility that equal at least fifty per cent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

(G) "Occupy" means to make expenditures to alter or repair a vacant facility equal to at least twenty per cent of the market value of the facility prior to such expenditures, as determined for the purposes of local property taxation.

(H) "Project site" means all or any part of a facility that is newly constructed, expanded, renovated, or occupied by an enterprise.

(I) "Project" means any undertaking by an enterprise to establish a facility or to improve a project site by expansion, renovation, or occupancy.

(J) "Position" means the position of one full-time employee performing a particular set of tasks and duties.

(K) "Full-time employee" means an individual who is employed for consideration by an enterprise for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(L) "New employee" means a full-time employee first employed by an enterprise at a facility that is a project site after the enterprise enters an agreement under section 5709.62 or 5709.63 of the Revised Code. "New employee" does not include an employee if, immediately prior to being employed by the enterprise, the employee was employed by an enterprise that is a related member or predecessor enterprise of that enterprise.

(M) "Unemployed person" means any person who is totally unemployed in this state, as that term is defined in division (M) of section 4141.01 of the Revised Code, for at least ten consecutive weeks immediately preceding that person's employment at a facility that is a project site, or who is so unemployed for at least twenty-six of the fifty-two weeks immediately preceding that person's employment at such a facility.

(N) "JTPA eligible employee" means any individual who is eligible for employment or training under the "Job Training Partnership Act," 96 Stat. 1324 (1982), 29 U.S.C. 1501, as amended.

(O) "First used in business" means that the property referred to has not been used in business in this state by the enterprise that owns it, or by an enterprise that is a related member or predecessor enterprise of such an enterprise, other than as inventory, prior to being used in business at a facility as the result of a project.

(P) "Training program" means any noncredit training program or course of study that is offered by any state college or university; university branch district; community college; technical college; nonprofit college or university certified under section 1713.02 of the Revised Code; school district; joint vocational school district; school registered and authorized to offer programs under

section 3332.05 of the Revised Code; an entity administering any federal, state, or local adult education and training program; or any enterprise; and that meets all of the following requirements:

(1) It is approved by the director of development;

(2) It is established or operated to satisfy the need of a particular industry or enterprise for skilled or semi-skilled employees;

(3) An individual is required to complete the course or program before filling a position at a project site.

(Q) "Development" means to engage in the process of clearing and grading land, making, installing, or constructing water distribution systems, sewers, sewage collection systems, steam, gas, and electric lines, roads, curbs, gutters, sidewalks, storm drainage facilities, and construction of other facilities or buildings equal to at least fifty per cent of the market value of the facility prior to the expenditures, as determined for the purposes of local property taxation.

(R) "Large manufacturing facility" means a single Ohio facility that employed an average of at least one thousand individuals during the five calendar years preceding an agreement authorized under division (C)(3) of section 5709.62 or division (B)(2) of section 5709.63 of the Revised Code. For purposes of this division, both of the following apply:

(1) A single Ohio manufacturing facility employed an average of at least one thousand individuals during the five calendar years preceding entering into such an agreement if one-fifth of the sum of the number of employees employed on the highest employment day during each of the five calendar years equals or exceeds one thousand.

(2) The highest employment day is the day or days during a calendar year on which the number of employees employed at a single Ohio manufacturing facility was greater than on any other day during the calendar year.

(S) "Business cycle" means the cycle of business activity usually regarded as passing through alternating stages of prosperity and depression.

(T) "Making retail sales" means the effecting of point-of-final-purchase transactions at a facility open to the consuming public, wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold.

(U) "Environmentally contaminated" means that hazardous substances exist at a facility under conditions that have caused or would cause the facility to be identified as contaminated by the state or federal environmental protection agency. These may include facilities located at sites identified in the master sites list or similar database maintained by the state environmental protection agency if the sites have been investigated by the agency and found to be contaminated.

(V) "Remediate" means to make expenditures to clean up an environmentally contaminated facility so that it is no longer environmentally contaminated that equal at least ten per cent of the real property market value of the facility prior to such expenditures as determined for the purposes of property taxation.

(W) "Related member" has the same meaning as defined in section 5733.042 of the Revised Code without regard to division (B) of that section, except that it is used with respect to an enterprise rather than a taxpayer.

(X) "Predecessor enterprise" means an enterprise from which the assets or equity of another enterprise has been transferred, which transfer resulted in the full or partial nonrecognition of gain or

loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner.

(Y) "Successor enterprise" means an enterprise to which the assets or equity of another enterprise has been transferred, which transfer resulted in the full or partial nonrecognition of gain or loss, or resulted in a carryover basis, both as determined by rule adopted by the tax commissioner.

Sec. 5709.80. (A) The board of county commissioners of a county that receives service payments in lieu of taxes under section 5709.79 of the Revised Code shall establish a redevelopment tax equivalent fund into which those payments shall be deposited. Separate accounts shall be established in the fund for each resolution adopted by the board of county commissioners under section 5709.78 of the Revised Code. If the board of county commissioners has adopted a resolution under division (B) of that section, the county shall establish an account for each incentive district created in that resolution. If a resolution adopted under division (B) of section 5709.78 of the Revised Code also authorizes the use of service payments for housing renovations within the incentive district, the county shall establish separate accounts for the service payments designated for public infrastructure improvements and for the service payments authorized for the purpose of housing renovations.

(B) Moneys deposited into each account of the fund shall be used by the county to pay the cost of constructing or repairing the public infrastructure improvements designated in, or the housing renovations authorized by, the resolution, or for each incentive district for which the account is established, to pay the interest on and principal of bonds or notes issued under division (B) of section 307.082 or division (A) of section 5709.81 of the Revised Code, or for the purposes pledged under division (B) of section 5709.81 of the Revised Code. Money in an account shall not be used to finance or support housing renovations that take place after the incentive district has expired.

(C)(1)(a) The board of county commissioners may distribute money in an account to any school district in which the exempt property is located in an amount not to exceed the amount of real property taxes that such school district would have received from the improvement if it were not exempt from taxation. The resolution under which an account is established shall set forth the percentage of such maximum amount that will be distributed to any affected school district.

(b) A board of county commissioners also may distribute money in such an account as follows:

(i) To a board of township trustees or legislative authority of a municipal corporation, as applicable, in the amount that is owed to the board of township trustees or legislative authority pursuant to division (D) of section 5709.78 of the Revised Code;

(ii) To a township in accordance with section 5709.914 of the Revised Code.

(2) Money from an account in the redevelopment tax equivalent fund may be distributed under division (C)(1)(b) of this section, regardless of the date a resolution was adopted under section 5709.78 of the Revised Code that prompted the establishment of the account, even if the resolution was adopted prior to ~~the effective date of this amendment~~ March 30, 2006.

(D) An account dissolves upon fulfillment of the purposes for which money in the account may be used. An incidental surplus remaining in an account upon its dissolution shall be transferred to the general fund of the county.

Sec. 5709.85. (A) The legislative authority of a county, township, or municipal corporation that grants an exemption from taxation under Chapter 725. or 1728. or under section 3735.67,

5709.28, 5709.40, 5709.41, 5709.45, 5709.62, 5709.63, 5709.632, 5709.73, or 5709.78 of the Revised Code shall create a tax incentive review council. The council shall consist of the following members:

(1) In the case of a municipal corporation eligible to designate a zone under section 5709.62 or 5709.632 of the Revised Code, the chief executive officer or that officer's designee; a member of the legislative authority of the municipal corporation, appointed by the president of the legislative authority or, if the chief executive officer of the municipal corporation is the president, appointed by the president pro tempore of the legislative authority; the county auditor or the county auditor's designee; the chief financial officer of the municipal corporation or that officer's designee; an individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the instrument granting the exemption applies; and two members of the public appointed by the chief executive officer of the municipal corporation with the concurrence of the legislative authority. At least four members of the council shall be residents of the municipal corporation, and at least one of the two public members appointed by the chief executive officer shall be a minority. As used in division (A)(1) of this section, a "minority" is an individual who is African-American, Hispanic, or Native American.

(2) In the case of a county or a municipal corporation that is not eligible to designate a zone under section 5709.62 or 5709.632 of the Revised Code, three members appointed by the board of county commissioners; two members from each municipal corporation to which the instrument granting the tax exemption applies, appointed by the chief executive officer with the concurrence of the legislative authority of the respective municipal corporations; two members of each township to which the instrument granting the tax exemption applies, appointed by the board of township trustees of the respective townships; the county auditor or the county auditor's designee; and an individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the instrument granting the tax exemption applies. At least two members of the council shall be residents of the municipal corporations or townships to which the instrument granting the tax exemption applies.

(3) In the case of a township in which improvements are declared a public purpose under section 5709.73 of the Revised Code, the board of township trustees; the county auditor or the county auditor's designee; and an individual appointed by the board of education of each city, local, exempted village, and joint vocational school district to which the instrument granting the exemption applies.

(B) The county auditor or the county auditor's designee shall serve as the chairperson of the council. The council shall meet at the call of the chairperson. At the first meeting of the council, the council shall select a vice-chairperson. Attendance by a majority of the members of the council constitutes a quorum to conduct the business of the council.

(C)(1) Annually, the tax incentive review council shall review all agreements granting exemptions from property taxation under Chapter 725. or 1728. or under section 3735.671, 5709.28, 5709.62, 5709.63, or 5709.632 of the Revised Code, and any performance or audit reports required to be submitted pursuant to those agreements. The review shall include agreements granting such exemptions that were entered into prior to July 22, 1994, that continue to be in force and applicable to the current year's property taxes.

With respect to each agreement, other than an agreement entered into under section 5709.28 of the Revised Code, the council shall determine whether the owner of the exempted property has complied with the agreement, and may take into consideration any fluctuations in the business cycle unique to the owner's business.

With respect to an agreement entered into under section 5709.28 of the Revised Code, the council shall consist of the members described in division (A)(2) of this section and shall determine whether the agreement complies with the requirements of section 5709.28 of the Revised Code and whether a withdrawal, removal, or conversion of land from an agricultural security area established under Chapter 931. of the Revised Code has occurred in a manner that makes the exempted property no longer eligible for the exemption.

On the basis of the determinations, on or before the first day of September of each year, the council shall submit to the legislative authority written recommendations for continuation, modification, or cancellation of each agreement.

(2) Annually, the tax incentive review council shall review all exemptions from property taxation resulting from the declaration of public purpose improvements pursuant to section 5709.40, 5709.41, 5709.45, 5709.73, or 5709.78 of the Revised Code. The review shall include such exemptions that were granted prior to July 22, 1994, that continue to be in force and applicable to the current year's property taxes. With respect to each improvement for which an exemption is granted, the council shall determine the increase in the true value of parcels of real property on which improvements have been undertaken as a result of the exemption; the value of improvements exempted from taxation as a result of the exemption; and the number of new employees or employees retained on the site of the improvement as a result of the exemption.

Upon the request of a tax incentive review council, the county auditor, the housing officer appointed pursuant to section 3735.66 of the Revised Code, the owner of a new or remodeled structure or improvement, and the legislative authority of the county, township, or municipal corporation granting the exemption shall supply the council with any information reasonably necessary for the council to make the determinations required under division (C) of this section, including returns or reports filed pursuant to sections 5711.02, 5711.13, and 5727.08 of the Revised Code.

(D) Annually, the tax incentive review council shall review the compliance of each recipient of a tax exemption under Chapter 725. or 1728. or section 3735.67, 5709.40, 5709.41, 5709.45, 5709.62, 5709.63, 5709.632, 5709.73, or 5709.78 of the Revised Code with the nondiscriminatory hiring policies developed by the county, township, or municipal corporation under section 5709.832 of the Revised Code. Upon the request of the council, the recipient shall provide the council any information necessary to perform its review. On the basis of its review, the council may submit to the legislative authority written recommendations for enhancing compliance with the nondiscriminatory hiring policies.

(E) A legislative authority that receives from a tax incentive review council written recommendations under division (C)(1) or (D) of this section shall, within sixty days after receipt, hold a meeting and vote to accept, reject, or modify all or any portion of the recommendations.

(F) A tax incentive review council may request from the recipient of a tax exemption under Chapter 725. or 1728. or section 3735.67, 5709.28, 5709.40, 5709.41, 5709.45, 5709.62, 5709.63,

5709.632, 5709.73, or 5709.78 of the Revised Code any information reasonably necessary for the council to perform its review under this section. The request shall be in writing and shall be sent to the recipient by certified mail. Within ten days after receipt of the request, the recipient shall provide to the council the information requested.

Sec. 5709.93. (A) As used in this section:

(1) "Taxes charged and payable" means taxes charged and payable after the reduction required by section 319.301 of the Revised Code but before the reductions required by sections 319.302 and 323.152 of the Revised Code.

(2) "Threshold per cent" means two per cent for fiscal year 2016; and, for fiscal year 2017 and thereafter, the sum of the prior year's threshold per cent plus two percentage points.

(3) "Public library" means a county, municipal, school district, or township public library that receives the proceeds of a tax levied under section 5705.23 of the Revised Code.

(4) "Local taxing unit" means a subdivision or taxing unit, as defined in section 5705.01 of the Revised Code, a park district created under Chapter 1545. of the Revised Code, or a township park district established under section 511.23 of the Revised Code, but excludes school districts and joint vocational school districts.

(5) "Municipal current expense allocation" means the sum of the payments received by a municipal corporation in calendar year 2014 for current expense levy losses under division (A)(1)(e)(ii) of section 5727.86 and division (A)(1)(c)(ii) of section 5751.22 of the Revised Code as they existed at that time.

(6) "Current expense allocation" means the sum of the payments received by a local taxing unit or public library in calendar year 2014 for current expense levy losses under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time, less any reduction required under division (B)(2) of this section.

(7) "TPP inside millage debt levy loss" means payments made to local taxing units in calendar year 2014 under division (A)(3) of section 5751.22 of the Revised Code as that section existed at that time.

(8) "S.B. 3 inside millage debt levy loss" means payments made to local taxing units in calendar year 2014 under section (A)(4) of section 5727.86 of the Revised Code as that section existed at that time.

(9) "Qualifying levy" means a levy for which payment was made in calendar year 2014 under division (A)(1) of section 5727.86 and divisions (A)(1) and (2) of section 5751.22 of the Revised Code as they existed at that time.

(10) "Total resources," in the case of county mental health and disability related functions, means the sum of the amounts in divisions (A)(10)(a) and (b) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the county for mental health and developmental disability related functions in calendar year 2014 under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for mental health and developmental disability related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2014.

(11) "Total resources," in the case of county senior services related functions, means the sum of the amounts in divisions (A)(11)(a) and (b) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the county for senior services related functions in calendar year 2014 under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for senior services related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2014.

(12) "Total resources," in the case of county children's services related functions, means the sum of the amounts in divisions (A)(12)(a) and (b) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the county for children's services related functions in calendar year 2014 under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for children's services related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2014.

(13) "Total resources," in the case of county public health related functions, means the sum of the amounts in divisions (A)(13)(a) and (b) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the county for public health related functions in calendar year 2014 under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) With respect to taxes levied by the county for public health related purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2014.

(14) "Total resources," in the case of all county functions not included in divisions (A)(10) to (13) of this section, means the sum of the amounts in divisions (A)(14)(a) to (e) of this section less any reduction required under division (B)(1) or (2) of this section.

(a) The sum of the payments received by the county for all other purposes in calendar year 2014 under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) The county's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2015 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2014 from the county undivided local government fund;

(c) With respect to taxes levied by the county for all other purposes, the taxes charged and payable for such purposes against all property on the tax list of real and public utility property for tax year 2014, excluding taxes charged and payable for the purpose of paying debt charges;

(d) The sum of the amounts distributed to the county in calendar year 2014 for the taxes

levied pursuant to sections 5739.021 and 5741.021 of the Revised Code;

(e) The sum of amounts distributed to the county from the gross casino revenue county fund from July 2014 through April 2015.

(15) "Total resources," in the case of a municipal corporation, means the sum of the amounts in divisions (A)(15)(a) to (h) of this section less any reduction required under division (B)(1) or (2) of this section.

(a) The sum of the payments received by the municipal corporation in calendar year 2014 for current expense levy losses under division (A)(1) of section 5727.86 and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) The municipal corporation's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2015 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2014 from the county undivided local government fund;

(c) The sum of the amounts distributed to the municipal corporation in calendar year 2014 pursuant to section 5747.50 of the Revised Code;

(d) With respect to taxes levied by the municipal corporation, the taxes charged and payable against all property on the tax list of real and public utility property for municipal current expenses for tax year 2014;

(e) The amount of admissions tax collected by the municipal corporation in calendar year 2013, or if such information has not yet been reported to the tax commissioner, in the most recent year before 2013 for which the municipal corporation has reported data to the commissioner;

(f) The amount of income taxes collected by the municipal corporation in calendar year 2013 as certified to the tax commissioner under section 5747.50 of the Revised Code in 2013, or if such information has not yet been reported to the commissioner, in the most recent year before 2014 for which the municipal corporation has reported such data to the commissioner;

(g) The sum of the amounts distributed to the municipal corporation from the gross casino revenue host city fund from July 2014 through April 2015;

(h) The sum of the amounts distributed to the municipal corporation from the gross casino revenue county fund from July 2014 through April 2015.

(16) "Total resources," in the case of a township, means the sum of the amounts in divisions (A)(16)(a) to (c) of this section less any reduction required under division (B)(1) or (2) of this section.

(a) The sum of the payments received by the township in calendar year 2014 pursuant to division (A)(1) of section 5727.86 of the Revised Code and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time, excluding payments received for debt purposes;

(b) The township's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2015 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2014 from the county undivided local government fund;

(c) With respect to taxes levied by the township, the taxes charged and payable against all

property on the tax list of real and public utility property for tax year 2014 excluding taxes charged and payable for the purpose of paying debt charges or from levies imposed under section 5705.23 of the Revised Code.

(17) "Total resources," in the case of a local taxing unit that is not a county, municipal corporation, township, or public library means the sum of the amounts in divisions (A)(17)(a) to (e) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the local taxing unit in calendar year 2014 pursuant to division (A)(1) of section 5727.86 of the Revised Code and division (A)(1) of section 5751.22 of the Revised Code as they existed at that time;

(b) The local taxing unit's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2015 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2014 from the county undivided local government fund;

(c) With respect to taxes levied by the local taxing unit, the taxes charged and payable against all property on the tax list of real and public utility property for tax year 2014 excluding taxes charged and payable for the purpose of paying debt charges or from a levy imposed under section 5705.23 of the Revised Code;

(d) The amount received from the tax commissioner during calendar year 2014 for sales or use taxes authorized under sections 5739.023 and 5741.022 of the Revised Code;

(e) For institutions of higher education receiving tax revenue from a local levy, as identified in section 3358.02 of the Revised Code, the final state share of instruction allocation for fiscal year 2014 as calculated by the chancellor of higher education and reported to the state controlling board.

(18) "Total resources," in the case of a county, municipal corporation, school district, or township public library that receives the proceeds of a tax levied under section 5705.23 of the Revised Code, means the sum of the amounts in divisions (A)(18)(a) to (d) of this section less any reduction required under division (B)(1) of this section.

(a) The sum of the payments received by the county, municipal corporation, school district, or township public library in calendar year 2014 pursuant to sections 5727.86 and 5751.22 of the Revised Code, as they existed at that time, for fixed-rate levy losses attributable to a tax levied under section 5705.23 of the Revised Code for the benefit of the public library;

(b) The public library's percentage share of county undivided local government fund allocations as certified to the tax commissioner for calendar year 2015 by the county auditor under division (J) of section 5747.51 of the Revised Code or division (F) of section 5747.53 of the Revised Code multiplied by the total amount actually distributed in calendar year 2014 from the county undivided local government fund;

(c) With respect to a tax levied pursuant to section 5705.23 of the Revised Code for the benefit of the public library, the amount of such tax that is charged and payable against all property on the tax list of real and public utility property for tax year 2014 excluding any tax that is charged and payable for the purpose of paying debt charges;

(d) The sum of the amounts distributed to the library district from the county public library fund in calendar year 2014, as reported to the tax commissioner by the county auditor.

(19) "Municipal current expense property tax levies" means all property tax levies of a municipality, except those with the following levy names: library; airport resurfacing; bond or any levy name including the word "bond"; capital improvement or any levy name including the word "capital"; debt or any levy name including the word "debt"; equipment or any levy name including the word "equipment," unless the levy is for combined operating and equipment; employee termination fund; fire pension or any levy containing the word "pension," including police pensions; fireman's fund or any practically similar name; sinking fund; road improvements or any levy containing the word "road"; fire truck or apparatus; flood or any levy containing the word "flood"; conservancy district; county health; note retirement; sewage, or any levy containing the words "sewage" or "sewer"; park improvement; parkland acquisition; storm drain; street or any levy name containing the word "street"; lighting, or any levy name containing the word "lighting"; and water.

(20) "Operating fixed-rate levy loss" means, in the case of local taxing units other than municipal corporations, fixed-rate levy losses of levies imposed for purposes other than paying debt charges or, in the case of municipal corporations, fixed-rate levy losses of municipal current expense property tax levies.

~~(22)~~(21)(a) "Qualifying municipal corporation" means a municipal corporation in the territory of which a qualifying end user is located.

(b) "Qualifying end user" means an end user of at least seven million qualifying kilowatt hours of electricity annually.

(c) "Qualifying kilowatt hours" means kilowatt hours of electricity generated by a renewable energy resource, as defined in section 5727.01 of the Revised Code, using wind energy and the distribution of which is subject to the tax levied under section 5727.81 of the Revised Code for any measurement period beginning after June 30, 2015.

~~(23)~~(22) Any term used in this section has the same meaning as in section 5727.84 or 5751.20 of the Revised Code unless otherwise defined by this section.

(B)(1) "Total resources" used to compute payments to be made under division (C) of this section shall be reduced to the extent that payments distributed in calendar year 2014 were attributable to levies no longer charged and payable.

(2) "Current expense allocation" used to compute payments to be made under division (C) of this section shall be reduced to the extent that payments distributed in calendar year 2014 were attributable to levies no longer charged and payable.

(C)(1) Except as provided in ~~divisions~~ division (D) of this section, the tax commissioner shall compute payments for operating fixed-rate levy losses of local taxing units and public libraries for fiscal year 2016 and each year thereafter as prescribed in divisions (C)(1)(a) and (b) ~~and~~ of this section:

(a) For public libraries and local taxing units other than municipal corporations:

(i) If the ratio of current expense allocation to total resources is equal to or less than the threshold per cent, zero;

(ii) If the ratio of current expense allocation to total resources is greater than the threshold per cent, the current expense allocation minus the product of total resources multiplied by the threshold per cent.

(b) For municipal corporations:

(i) If the ratio of the municipal current expense allocation to total resources is equal to or less than the threshold per cent, zero;

(ii) If the ratio of the municipal current expense allocation to total resources is greater than the threshold per cent, the municipal current expense allocation minus the product of total resources multiplied by the threshold per cent.

~~(3)~~(2) For any local taxing unit or public library with operating fixed-rate levy losses greater than zero, the operating fixed-rate levy loss shall be allocated among all qualifying operating fixed-rate levies in proportion to each such levy's share of the payments received in tax year 2014. In fiscal year 2016 and thereafter, if a levy to which operating fixed-rate levy loss is allocated is no longer charged and payable, the payment to the local taxing unit or public library shall be reduced by the amount allocated to the levy that is no longer charged and payable.

(D)(1) Except as provided in division (D)(2) of this section, the tax commissioner shall make payments to local taxing units equal to the sum of TPP inside millage debt levy loss and S.B. 3 inside millage debt levy loss. No payment shall be made if the levy for which the levy loss is computed is not charged and payable for debt purposes in fiscal year 2016 or any year thereafter.

(2) No payment shall be made for TPP inside millage debt levy loss in calendar year 2018 or thereafter. No payment shall be made for S.B.3 inside millage debt levy loss in calendar year 2017 or thereafter.

(E) For a qualifying municipal corporation, the tax commissioner shall compute payments for fiscal year 2016 and each ensuing fiscal year in an amount equal to the amount of tax imposed under section 5727.81 of the Revised Code and paid on the basis of qualifying kilowatt hours of electricity distributed through the meter of a qualifying end user located in the municipal corporation for measurement periods ending in the preceding calendar year. The payment shall be computed regardless of whether the qualifying municipal corporation qualifies for a payment under any other division of this section for the fiscal year in which the payment is computed under this division. For the purposes of this division, the commissioner may require an electric distribution company distributing qualifying kilowatt hours or, if the end user is a self-assessing purchaser, the end user, to report to the commissioner the number of qualifying kilowatt hours distributed through the meter of the qualifying end user.

(F)(1) The payments required to be made under divisions (C) and (D) of this section shall be paid from the local government tangible property tax replacement fund to the county undivided income tax fund in the proper county treasury. Beginning in August 2015, one-half of the amount determined under each of those divisions shall be paid on or before the last day of August each year, and one-half shall be paid on or before the last day of February each year. Within thirty days after receipt of such payments, the county treasurer shall distribute amounts determined under this section to the proper local taxing unit or public library as if they had been levied and collected as taxes, and the local taxing unit or public library shall allocate the amounts so received among its funds in the same proportions as if those amounts had been levied and collected as taxes.

(2) On or before the last day of August and of February of each fiscal year that follows a calendar year in which taxes are paid on the basis of qualifying kilowatt hours of electricity distributed through the meter of a qualifying end user located in a qualifying municipal corporation, one-half of the payment computed under division (E) of this section shall be paid from the local

government tangible personal property tax replacement fund directly to the qualifying municipal corporation. The municipal corporation shall credit the payments to a special fund created for the purpose of providing grants or other financial assistance to the qualifying end user or to compensate the municipal corporation for municipal income tax or other tax credits or reductions as the legislative authority may grant to the qualifying end user. Such grants or other financial assistance may be provided for by ordinance or resolution of the legislative authority of the qualifying municipal corporation and may continue for as long as is provided by the ordinance or resolution.

(G) If all or a part of the territories of two or more local taxing units are merged, or unincorporated territory of a township is annexed by a municipal corporation, the tax commissioner shall adjust the payments made under this section to each of the local taxing units in proportion to the square mileage of the merged or annexed territory as a percentage of the total square mileage of the jurisdiction from which the territory originated, or as otherwise provided by a written agreement between the legislative authorities of the local taxing units certified to the commissioner not later than the first day of June of the calendar year in which the payment is to be made.

Sec. 5713.03. The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon and the current agricultural use value of land valued for tax purposes in accordance with section 5713.31 of the Revised Code, in every district, according to the rules prescribed by this chapter and section 5715.01 of the Revised Code, and in accordance with the uniform rules and methods of valuing and assessing real property as adopted, prescribed, and promulgated by the tax commissioner. The auditor shall determine the taxable value of all real property by reducing its true or current agricultural use value by the percentage ordered by the commissioner. In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot, or parcel has been the subject of an arm's length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor may consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. However, the sale price in an arm's length transaction between a willing seller and a willing buyer shall not be considered the true value of the property sold if subsequent to the sale:

(A) The tract, lot, or parcel of real estate loses value due to some casualty;

(B) An improvement is added to the property. ~~Nothing~~

Nothing in this section or section 5713.01 of the Revised Code and no rule adopted under section 5715.01 of the Revised Code shall require the county auditor to change the true value in money of any property in any year except a year in which the tax commissioner is required to determine under section 5715.24 of the Revised Code whether the property has been assessed as required by law.

The county auditor shall adopt and use a real property record approved by the commissioner for each tract, lot, or parcel of real property, setting forth the true and taxable value of land and, in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, the number of acres of arable land, permanent pasture land, woodland, and wasteland in each tract, lot, or parcel. The auditor shall record pertinent information and the true and taxable value

of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.

Sec. 5713.30. As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

(A) "Land devoted exclusively to agricultural use" means:

(1) Tracts, lots, or parcels of land totaling not less than ten acres to which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, one or more of the following apply:

(a) The tracts, lots, or parcels of land were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the cultivation of hemp by a person issued a hemp cultivation license under section 928.02 of the Revised Code, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use.

(b) The tracts, lots, or parcels of land were devoted exclusively to biodiesel production, biomass energy production, electric or heat energy production, or biologically derived methane gas production if the land on which the production facility is located is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, provided that at least fifty per cent of the feedstock used in the production was derived from parcels of land under common ownership or leasehold.

(c) The tracts, lots, or parcels of land were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government.

(2) Tracts, lots, or parcels of land totaling less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the cultivation of hemp by a person issued a hemp cultivation license under section 928.02 of the Revised Code, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government;

(3) ~~A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use.~~

~~(4)~~ Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow for up to one year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use as defined in this section. Such land shall remain designated as land devoted exclusively to agricultural use provided that beyond one year, but less than three years, the

landowner proves good cause as determined by the board of revision.

~~(5)~~ (4) Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow because of dredged material being stored or deposited on such land pursuant to a contract between the land's owner and the department of natural resources or the United States army corps of engineers and no action has occurred to the land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use. Such land shall remain designated as land devoted exclusively to agricultural use until the last year in which dredged material is stored or deposited on the land pursuant to such a contract, but not to exceed five years.

"Land devoted exclusively to agricultural use" includes tracts, lots, or parcels of land or portions thereof that are used for conservation practices, provided that the tracts, lots, or parcels of land or portions thereof comprise twenty-five per cent or less of the total of the tracts, lots, or parcels of land that satisfy the criteria established in division (A)(1), (2), ~~(4)~~(3), or ~~(5)~~ (4) of this section together with the tracts, lots, or parcels of land or portions thereof that are used for conservation practices.

Notwithstanding any other provision of law to the contrary, the existence of agritourism on a tract, lot, or parcel of land that otherwise meets the definition of "land devoted exclusively to agricultural use" as defined in this division does not disqualify that tract, lot, or parcel from valuation under sections 5713.30 to 5713.37 and 5715.01 of the Revised Code.

A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use.

A tract, lot, parcel, or portion thereof on which medical marijuana, as defined by section 3796.01 of the Revised Code, is cultivated or processed is not land devoted exclusively to agricultural use.

(B) "Conversion of land devoted exclusively to agricultural use" means any of the following:

(1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under section 5713.31 of the Revised Code without good cause as determined by the board of revision;

(2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;

(3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;

(4) The failure of the owner of the land described in division ~~(A)(4)~~ (A)(3) or ~~(5)~~ (4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural production after three years.

The construction or installation of an energy facility, as defined in section 5727.01 of the Revised Code, on a portion of a tract, lot, or parcel of land devoted exclusively to agricultural use shall not cause the remaining portion of the tract, lot, or parcel to be regarded as a conversion of land devoted exclusively to agricultural use if the remaining portion of the tract, lot, or parcel continues to be devoted exclusively to agricultural use.

(C) "Tax savings" means the difference between the dollar amount of real property taxes

levied in any year on land valued and assessed in accordance with its current agricultural use value and the dollar amount of real property taxes that would have been levied upon such land if it had been valued and assessed for such year in accordance with Section 2 of Article XII, Ohio Constitution.

(D) "Owner" includes, but is not limited to, any person owning a fee simple, fee tail, or life estate or a buyer on a land installment contract.

(E) "Conservation practices" are practices used to abate soil erosion as required in the management of the farming operation, and include, but are not limited to, the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops for that purpose.

(F) "Wetlands" has the same meaning as in section 6111.02 of the Revised Code.

(G) "Biodiesel" means a mono-alkyl ester combustible liquid fuel that is derived from vegetable oils or animal fats or any combination of those reagents and that meets the American society for testing and materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

(H) "Biologically derived methane gas" means gas from the anaerobic digestion of organic materials, including animal waste and agricultural crops and residues.

(I) "Biomass energy" means energy that is produced from organic material derived from plants or animals and available on a renewable basis, including, but not limited to, agricultural crops, tree crops, crop by-products, and residues.

(J) "Electric or heat energy" means electric or heat energy generated from manure, cornstalks, soybean waste, or other agricultural feedstocks.

(K) "Dredged material" means material that is excavated or dredged from waters of this state. "Dredged material" does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(L) "Agritourism" has the same meaning as in section 901.80 of the Revised Code.

Sec. 5713.351. If the county auditor has determined under section 5713.35 of the Revised Code that a conversion of land has occurred with respect to any tract, lot, or parcel on the agricultural land tax list because of a failure to file an initial or renewal application, and if the auditor, upon application of the owner and payment by the owner of a twenty-five-dollar fee, finds that the land would be land devoted exclusively to agricultural use for the current year if the board of revision finds the failure arose for good cause, the owner may file a complaint against that determination with the board as provided in section 5715.19 of the Revised Code on the grounds that the tract, lot, or parcel is land devoted exclusively to agricultural use because there was good cause for the owner's failure to file an initial or renewal application. If the board finds that there was such good cause, the application under this section shall be considered an application that was properly filed under section 5713.31 of the Revised Code.

Sec. 5715.13. (A) Except as provided in division (B) of this section, the county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath and signature, showing the facts upon which it is claimed such

decrease should be made.

(B) The county board of revision may authorize a policy for the filing of an electronic complaint under section 5715.19 of the Revised Code and the filing of an electronic application therefor under this section, subject to the approval of the tax commissioner. An electronic complaint need not be sworn to, but shall contain an electronic verification and shall be subscribed to by the person filing the complaint: "I declare under penalties of perjury that this complaint has been examined by me and to the best of my knowledge and belief is true, correct, and complete."

Sec. 5715.36. (A) Any expense incurred by the tax commissioner as to the annual assessment of real property in any taxing district shall be paid out of the treasury of the county in which such district is located upon presentation of the order of the commissioner certifying the amount thereof to the county auditor, who shall thereupon issue a warrant therefor upon the general fund of the county and direct the warrant to the county treasurer, who shall pay the same. All money paid out of the county treasury under authority of this division and section 5703.30 of the Revised Code shall be charged against the proper district, and amounts paid by the county shall be retained by the auditor from funds due such district at the time of making the semiannual distribution of taxes.

(B) Any expense incurred by the board of tax appeals as to the hearing of any appeal from a county budget commission with respect to the allocation of the local government fund or the county public library fund shall be paid out of the treasury of the county involved upon presentation of the order of the board certifying the amount thereof to the county auditor, who shall thereupon issue a warrant therefor upon the general fund of the county and direct the warrant to the county treasurer, who shall pay the same. At the time the local government fund or the county public library fund is distributed, all money which had been paid out of the county treasury for such expenses shall be deducted by the county auditor from the fund involved in the appeal. The amount so deducted by the county auditor shall be forthwith returned to the general fund of the county.

(C) An amount equal to the sum of the expenses incurred by the board of tax appeals as to any of the following shall be paid out of the general fund of the county in which such property is located upon presentation of the order of the board certifying the amount thereof to the county auditor, who shall thereupon issue a warrant therefor upon the general fund of the county and direct the warrant to the county treasurer, who shall pay the same:

(1) The hearing of any appeal from a county board of revision under section 5717.01 of the Revised Code;

(2) An appeal from any finding, computation, determination, or order of the tax commissioner made with respect to the assessment or exemption of real property under ~~division (B) of section 5715.61 and~~ section 5717.02 of the Revised Code. At the time of each settlement of taxes under divisions (A) and (C) of section 321.24 of the Revised Code, there shall be deducted from the taxes included in such settlement and paid into the county general fund in the same manner as the fees allowed the county treasurer on amounts included in such settlement, the amounts paid out under this division since the preceding settlement. Each deduction shall be apportioned among the taxing districts within which the property that was the subject of the appeal is located in proportion to their relative shares of their respective taxes included in the settlement.

Sec. 5721.06. (A)(1) The form of the notice required to be attached to the published delinquent tax list by division (B)(3) of section 5721.03 of the Revised Code shall be in substance as

follows:

"DELINQUENT LAND TAX NOTICE

The lands, lots, and parts of lots returned delinquent by the county treasurer of _____ county, with the taxes, assessments, interest, and penalties, charged against them agreeably to law, are contained and described in the following list: (Here insert the list with the names of the owners of such respective tracts of land or town lots as designated on the delinquent tax list. If, prior to seven days before the publication of the list, a delinquent tax contract has been entered into under section 323.31 of the Revised Code, the owner's name may be stricken from the list or designated by an asterisk shown in the margin next to the owner's name.)

Notice is hereby given that the whole of such several lands, lots, or parts of lots will be certified for foreclosure by the county auditor pursuant to law unless the whole of the delinquent taxes, assessments, interest, and penalties are paid within one year or unless a tax certificate with respect to the parcel is sold under section 5721.32 or 5721.33 of the Revised Code. The names of persons who have entered into a written delinquent tax contract with the county treasurer to discharge the delinquency are designated by an asterisk or have been stricken from the list."

(2) If the county treasurer has certified to the county auditor that the treasurer intends to offer for sale or assign a tax certificate with respect to one or more parcels of delinquent land under section 5721.32 or 5721.33 of the Revised Code, the form of the notice shall include the following statement, appended after the second paragraph of the notice prescribed by division (A)(1) of this section:

"Notice also is hereby given that a tax certificate may be offered for sale or assigned under section 5721.32 or 5721.33 of the Revised Code with respect to those parcels shown on this list. If a tax certificate on a parcel is purchased, the purchaser of the tax certificate acquires the state's or its taxing district's first lien against the property, and an additional interest charge of up to eighteen per cent per annum shall be assessed against the parcel. In addition, failure by the owner of the parcel to redeem the tax certificate may result in foreclosure proceedings against the parcel. No tax certificate shall be offered for sale if the owner of the parcel has either discharged the lien by paying to the county treasurer in cash the amount of delinquent taxes, assessments, penalties, interest, and charges charged against the property, or has entered into a valid delinquent tax contract pursuant to section 323.31 of the Revised Code to pay those amounts in installments."

(B) The form of the notice required to be attached to the published delinquent vacant land tax list by division (B)(3) of section 5721.03 of the Revised Code shall be in substance as follows:

"DELINQUENT VACANT LAND TAX NOTICE

The delinquent vacant lands, returned delinquent by the county treasurer of_____ county, with the taxes, assessments, interest, and penalties charged against them according to law, and remaining delinquent for one year, are contained and described in the following list: (here insert the list with the names of the owners of the respective tracts of land as designated on the delinquent vacant land tax list. If, prior to seven days before the publication of the list, a delinquent tax contract has been entered into under section 323.31 of the Revised Code, the owner's name may be stricken from the list or designated by an asterisk shown in the margin next to the owner's name.)

Notice is hereby given that these delinquent vacant lands will be certified for foreclosure or foreclosure and forfeiture by the county auditor pursuant to law unless the whole of the delinquent

taxes, assessments, interest, and penalties are paid within twenty-eight days after the final publication of this notice. The names of persons who have entered into a written delinquent tax contract with the county treasurer to discharge the delinquency are designated by an asterisk or have been stricken from the list."

Sec. 5721.191. (A) Subject to division (B) of this section, the form for the advertisement of a sale conducted pursuant to section 5721.19 of the Revised Code shall be as follows:

"Notice of sale under judgment of foreclosure of liens
for delinquent land taxes

In the _____ court of _____, Ohio
case no.
in the matter of foreclosure of liens for
delinquent land taxes
county treasurer of _____, Ohio
Plaintiff,
vs.
parcels of land encumbered with delinquent
tax liens,
Defendants.

Whereas, judgment has been rendered against certain parcels of real property for taxes, assessments, charges, penalties, interest, and costs as follows:

(Here set out, for each parcel, the respective permanent parcel number, full street address, description of the parcel, name and address of the last known owners of the parcel as shown on the general tax list, and total amount of the judgment) and;

Whereas, such judgment orders such real property to be sold or otherwise disposed of according to law by the undersigned to satisfy the total amount of such judgment;

Now, therefore, public notice is hereby given that I, _____ (officer) of _____, Ohio, will either dispose of such property according to law or sell such real property at public auction, for cash, to the highest bidder of an amount that equals at least (insert here, as in the court's order, the fair market value of the parcel as determined by the county auditor, or the total amount of the judgment, including all taxes, assessments, charges, penalties, and interest payable subsequent to the delivery to the prosecuting attorney of the delinquent land tax certificate or master list of delinquent tracts and prior to the transfer of the deed of the property to the purchaser following confirmation of sale), between the hours of _____ a.m. and _____ p.m., at (address and location) in _____, Ohio, on _____, the _____ day of _____, ____ If any parcel does not receive a sufficient bid or is not otherwise disposed of according to law, it may be offered for sale, under the same terms and conditions of the first sale and at the same time of day and at the same place, on _____, the _____ day of _____, ___, for an amount that equals at least (insert here, as in the court's order, the fair market value of the parcel as determined by the county auditor, or the total amount of the judgment, including all taxes assessments, charges, penalties, and interest payable subsequent to the delivery to the prosecuting attorney of the delinquent land tax certificate or master list of delinquent tracts and prior to the transfer of the deed of the property to the purchaser following confirmation of sale)."

(B) If the title search required by division (B) of section 5721.18 of the Revised Code that relates to a parcel subject to an in rem action under that division, or if the title search that relates to a parcel subject to an in personam action under division (A) of section 5721.18 of the Revised Code, indicates that a federal tax lien exists relative to the parcel, then the form of the advertisement of sale as described in division (A) of this section additionally shall include the following statement in boldface type:

"PUBLIC NOTICE IS HEREBY GIVEN THAT (INSERT HERE THE DESCRIPTION OF EACH RELEVANT PARCEL) TO BE SOLD AT PUBLIC AUCTION IS SUBJECT TO A FEDERAL TAX LIEN THAT MAY NOT BE EXTINGUISHED BY THE SALE.

_____

(officer)"

(C) If the proceedings for foreclosure were instituted under division (C) of section 5721.18 of the Revised Code, then the form of the advertisement of sale as described in division (A) of this section additionally shall include the following statement in boldface type:

"Public notice is hereby given that (insert here the description of each relevant parcel) to be sold at public auction will be sold subject to all liens and encumbrances with respect to the parcel, other than the liens for land taxes, assessments, charges, penalties, and interest for which the lien was foreclosed and in satisfaction of which the property is sold.

_____

(officer)"

Sec. 5721.39. (A) In its judgment of foreclosure rendered in actions filed pursuant to section 5721.37 of the Revised Code, the court or board of revision shall enter a finding that includes all of the following with respect to the certificate parcel:

(1) The amount of the sum of the certificate redemption prices for all the tax certificates sold against the parcel;

(2) Interest on the certificate purchase prices of all certificates at the rate of eighteen per cent per year for the period beginning on the day on which the payment was submitted by the certificate holder under division (B) of section 5721.37 of the Revised Code;

(3) The amount paid under division (B)(2) of section 5721.37 of the Revised Code, plus interest at the rate of eighteen per cent per year for the period beginning on the day the certificate holder filed a request for foreclosure or a notice of intent to foreclose under division (A) of that section;

(4) Any delinquent taxes on the parcel that are not covered by a payment under division (B)(2) of section 5721.37 of the Revised Code;

(5) Fees and costs incurred in the foreclosure proceeding instituted against the parcel, including, without limitation, the fees and costs of the prosecuting attorney represented by the fee paid under division (B)(3) of section 5721.37 of the Revised Code, plus interest as provided in division (D)(2)(d) of this section, or the fees and costs of the private attorney representing the certificate holder, and charges paid or incurred in procuring title searches and abstracting services

relative to the subject premises.

(B) The court or board of revision may order the certificate parcel to be sold or otherwise transferred according to law, without appraisal and as set forth in the prayer of the complaint, for not less than the amount of its finding, or, in the event that the true value of the certificate parcel as determined by the county auditor is less than the certificate redemption price, the court or board or revision may, as prayed for in the complaint, issue a decree transferring fee simple title free and clear of all subordinate liens to the certificate holder or as otherwise provided in sections 323.65 to 323.79 of the Revised Code. A decree of the court or board of revision transferring fee simple title to the certificate holder is forever a bar to all rights of redemption with respect to the certificate parcel.

(C)(1) The certificate holder may file a motion with the court for an order authorizing a specified private selling officer, as defined in section 2329.01 of the Revised Code, to sell the parcel at a public auction. If the court authorizes a private selling officer to sell the parcel, then upon the filing of a praecipe for order of sale with the clerk of the court, the clerk of the court shall immediately issue an order of sale to the private selling officer authorized by the court.

(2) The officer to whom the order of sale is directed may conduct the public auction of the parcel at a physical location in the county in which the parcel is located or online. If the public auction occurs online, the auction shall be open for bidding for seven days. If the parcel is not sold during this initial seven-day period, a second online auction shall be held not earlier than three days or later than thirty days after the end of the first auction. The second online auction shall be open for bidding for seven days.

(3) A private selling officer who conducts an auction of the parcel under this section may do any of the following:

(a) Market the parcels for sale and hire a title insurance agent licensed under Chapter 3953. of the Revised Code or title insurance company authorized to do business under that chapter to assist the private selling officer in performing administrative services;

(b) Execute to the purchaser, or to the purchaser's legal representatives, a deed of conveyance of the parcel sold in conformity with the form set forth in section 5302.31 of the Revised Code;

(c) Record on behalf of the purchaser the deed conveying title to the parcel sold, notwithstanding that the deed may not actually have been delivered to the purchaser prior to its recording.

(4) By placing a bid at a sale conducted pursuant to this section, a purchaser appoints the private selling officer who conducts the sale as agent of the purchaser for the sole purpose of accepting delivery of the deed.

(5) The private selling officer who conducts the sale shall hire a title insurance agent licensed under Chapter 3953. of the Revised Code or title insurance company authorized to do business under that chapter to perform title, escrow, and closing services related to the sale of the parcel.

(6) Except as otherwise provided in sections 323.65 to 323.79 of the Revised Code, and the alternative redemption period thereunder, each certificate parcel shall be advertised and sold by the officer to whom the order of sale is directed in the manner provided by law for the sale of real property on execution. The advertisement for sale of certificate parcels shall be published once a week for three consecutive weeks and shall include the date on which a second sale will be conducted if no bid is accepted at the first sale. Any number of parcels may be included in one

advertisement.

Except as otherwise provided in sections 323.65 to 323.79 of the Revised Code, whenever the officer charged to conduct the sale offers a certificate parcel for sale at a physical location and not online and no bids are made equal to at least the amount of the finding of the court or board of revision, the officer shall adjourn the sale of the parcel to the second date that was specified in the advertisement of sale. The second sale shall be held at the same place and commence at the same time as set forth in the advertisement of sale. The officer shall offer any parcel not sold at the first sale. Upon the conclusion of any sale, or if any parcel remains unsold after being offered at two sales, the officer conducting the sale shall report the results to the court or board of revision.

(D) Upon the confirmation of a sale, the proceeds of the sale shall be applied as follows:

(1) The fees and costs incurred in the proceeding filed against the parcel pursuant to section 5721.37 of the Revised Code shall be paid first, including attorney's fees of the certificate holder's attorney payable under division (F) of that section, private selling officer's fees and marketing costs, title agent's or title company's fees, or the county prosecutor's costs covered by the fee paid by the certificate holder under division (B)(3) of that section.

(2) Following the payment required by division (D)(1) of this section, the certificate holder that filed the notice of intent to foreclose or request for foreclosure with the county treasurer shall be paid the sum of the following amounts:

(a) The sum of the amount found due for the certificate redemption prices of all the tax certificates that are sold against the parcel;

(b) Any premium paid by the certificate holder at the time of purchase;

(c) Interest on the amounts paid by the certificate holder under division (B)(1) of section 5721.37 of the Revised Code at the rate of eighteen per cent per year beginning on the day on which the payment was submitted by the certificate holder to the county treasurer and ending on the day immediately preceding the day on which the proceeds of the foreclosure sale are paid to the certificate holder;

(d) Interest on the amounts paid by the certificate holder under divisions (B)(2) and (3) of section 5721.37 of the Revised Code at the rate of eighteen per cent per year beginning on the day on which the payment was submitted by the certificate holder under divisions (B)(2) and (3) of that section and ending on the day immediately preceding the day on which the proceeds of the foreclosure sale are paid to the certificate holder pursuant to this section, except that such interest shall not accrue for more than ~~three~~ six years ~~if the certificate was sold under section 5721.32 of the Revised Code, or under section 5721.42 of the Revised Code by the holder of a certificate issued under section 5721.32 of the Revised Code, or more than six years if the certificate was sold under section 5721.33 of the Revised Code, or under section 5721.42 of the Revised Code by the holder of a certificate issued under section 5721.33 of the Revised Code,~~ after the day the amounts were paid by the certificate holder under divisions (B)(2) and (3) of section 5721.37 of the Revised Code;

(e) The amounts paid by the certificate holder under divisions (B)(1), (2), and (3) of section 5721.37 of the Revised Code.

(3) Following the payment required by division (D)(2) of this section, any amount due for taxes, installments of assessments, charges, penalties, and interest not covered by the tax certificate holder's payment under division (B)(2) of section 5721.37 of the Revised Code shall be paid,

including all taxes, installments of assessments, charges, penalties, and interest payable subsequent to the entry of the finding and prior to the transfer of the deed of the parcel to the purchaser following confirmation of sale. If the proceeds available for distribution pursuant to this division are insufficient to pay the entire amount of those taxes, installments of assessments, charges, penalties, and interest, the proceeds shall be paid to each claimant in proportion to the amount of those taxes, installments of assessments, charges, penalties, and interest that each is due, and those taxes, installments of assessments, charges, penalties, and interest are deemed satisfied and shall be removed from the tax list and duplicate.

(4) Any residue of money from proceeds of the sale shall be disposed of as prescribed by section 5721.20 of the Revised Code.

(E) Unless the parcel previously was redeemed pursuant to section 5721.25 or 5721.38 of the Revised Code, upon the filing of the entry of confirmation of sale, or an order to transfer the parcel under sections 323.65 to 323.79 of the Revised Code, the title to the parcel is incontestable in the purchaser and is free and clear of all liens and encumbrances, except a federal tax lien, notice of which lien is properly filed in accordance with section 317.09 of the Revised Code prior to the date that a foreclosure proceeding is instituted pursuant to section 5721.37 of the Revised Code, and which lien was foreclosed in accordance with 28 U.S.C.A. 2410(c), and except for the easements and covenants of record running with the land or lots that were created prior to the time the taxes or installments of assessments, for the nonpayment of which a tax certificate was issued and the parcel sold at foreclosure, became due and payable.

The title shall not be invalid because of any irregularity, informality, or omission of any proceedings under this chapter or in any processes of taxation, if such irregularity, informality, or omission does not abrogate the provision for notice to holders of title, lien, or mortgage to, or other interests in, such foreclosed parcels, as prescribed in this chapter.

Sec. 5725.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5725.18 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits and offsets against tax liability to which it is entitled in the following order:

~~(1)~~ The credit for an insurance company or insurance company group under section 5729.031 of the Revised Code;

~~(2)~~ The credit for eligible employee training costs under section 5725.31 of the Revised Code;

~~(3)~~ The credit for purchasers of qualified low-income community investments under section 5725.33 of the Revised Code;

~~(4)~~ The nonrefundable job retention credit under division (B) of section 122.171 of the Revised Code;

~~(5)~~ The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;

~~(6)~~ The offset of assessments by the Ohio life and health insurance guaranty association permitted by section 3956.20 of the Revised Code;

~~(7)~~ The refundable credit for rehabilitating a historic building under section 5725.34 of the Revised Code~~.~~;

~~(8)~~ The refundable credit for Ohio job retention under former division (B)(2) or (3) of section

122.171 of the Revised Code as those divisions existed before September 29, 2015, the effective date of the amendment of this section by H.B. 64 of the 131st general assembly;

~~(9)~~ The refundable credit for Ohio job creation under section 5725.32 of the Revised Code;

~~(10)~~ The refundable credit under section 5725.19 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5726.50. (A) A taxpayer may claim a refundable tax credit against the tax imposed under this chapter for each person included in the annual report of the taxpayer that is granted a credit by the tax credit authority under section 122.17 or former division (B)(2) or (3) of section 122.171 of the Revised Code as those divisions existed before ~~the effective date of the amendment of this section by H.B. 64 of the 131st general assembly~~ September 29, 2015. Such a credit shall not be claimed for any tax year following the calendar year in which a relocation of employment positions occurs in violation of an agreement entered into under section 122.17 or 122.171 of the Revised Code. For the purpose of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid on the first day of the tax year.

(B) A taxpayer may claim a nonrefundable tax credit against the tax imposed under this chapter for each person included in the annual report of the taxpayer that is granted a nonrefundable credit by the tax credit authority under division (B) of section 122.171 of the Revised Code. A taxpayer may claim against the tax imposed by this chapter any unused portion of the credits authorized under division (B) of section 5733.0610 of the Revised Code.

(C) The credits authorized in divisions (A) and (B) of this section shall be claimed in the order required under section 5726.98 of the Revised Code. If the amount of a credit authorized in division (A) of this section exceeds the tax otherwise due under section 5726.02 of the Revised Code after deducting all other credits preceding the credit in the order prescribed in section 5726.98 of the Revised Code, the excess shall be refunded to the taxpayer.

Sec. 5726.98. (A) To provide a uniform procedure for calculating the amount of tax due under section 5726.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled under this chapter in the following order:

~~(1)~~ The nonrefundable job retention credit under division (B) of section 5726.50 of the Revised Code;

~~(2)~~ The nonrefundable credit for purchases of qualified low-income community investments under section 5726.54 of the Revised Code;

~~(3)~~ The nonrefundable credit for qualified research expenses under section 5726.56 of the Revised Code;

~~(4)~~ The nonrefundable credit for qualifying dealer in intangibles taxes under section 5726.57 of the Revised Code;

~~(5)~~ The refundable credit for rehabilitating an historic building under section 5726.52 of the Revised Code;

~~(6)~~ The refundable job retention or job creation credit under division (A) of section 5726.50 of the Revised Code;

~~(7)~~ The refundable credit under section 5726.53 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;

~~(8)~~ The refundable motion picture and broadway theatrical production credit under section 5726.55 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5727.02. As used in this chapter, "public utility," "electric company," "natural gas company," "pipe-line company," "water-works company," "water transportation company," or "heating company" does not include any of the following:

(A)(1) Except as provided in division (A)(2) of this section, any person that is engaged in some other primary business to which the supplying of electricity, heat, natural gas, water, water transportation, steam, or air to others is incidental.

(2) For tax year 2009 and each tax year thereafter, a person that is engaged in some other primary business to which the supplying of electricity to others is incidental shall be treated as an "electric company" and a "public utility" for purposes of this chapter solely to the extent required by section 5727.031 of the Revised Code.

(3) For purposes of division (A) of this section and section 5727.031 of the Revised Code:

(a) "Supplying of electricity" means generating, transmitting, or distributing electricity.

(b) A person that leases to others energy facilities with an aggregate nameplate capacity in this state of two hundred fifty kilowatts or less per lease is not supplying electricity to others.

(c) A person that owns, or leases from another person, energy facilities with an aggregate nameplate capacity in this state of two hundred fifty kilowatts or less is not supplying electricity to others, regardless of whether the owner or lessee engages in net metering as defined in section 4928.01 of the Revised Code.

(d) A political subdivision of this state that owns an energy facility is not supplying electricity to others regardless of the nameplate capacity of the facility if the primary purpose of the facility is to supply electricity for the political subdivision's own use. As used in this division, "political subdivision" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(B) Any person that supplies electricity, natural gas, water, water transportation, steam, or air to its tenants, whether for a separate charge or otherwise;

(C) Any person whose primary business in this state consists of producing, refining, or marketing petroleum or its products.

(D) Any person whose primary business in this state consists of producing or gathering natural gas rather than supplying or distributing natural gas to consumers.

Sec. 5727.11. (A) Except as otherwise provided in this section, the true value of all taxable property, except property of a railroad company, required by section 5727.06 of the Revised Code to

be assessed by the tax commissioner shall be determined by a method of valuation using cost as capitalized on the public utility's books and records less composite annual allowances as prescribed by the commissioner. If the commissioner finds that application of this method will not result in the determination of true value of the public utility's taxable property, the commissioner may use another method of valuation.

(B)(1) Except as provided in division (B)(2) of this section, the true value of current gas stored underground is the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

(2) For tax year 2001 and thereafter, the true value of current gas stored underground is the quotient obtained by dividing (a) the average value of the current gas stored underground, which shall be determined by adding the value of the gas on hand at the end of each calendar month in the calendar year preceding the tax year, or, if applicable, the last day of business of each month for a partial month, divided by (b) the total number of months the natural gas company was in business during the calendar year prior to the beginning of the tax year. ~~with~~ With the approval of the tax commissioner, a natural gas company may use a date other than the end of a calendar month to value its current gas stored underground.

(C) The true value of noncurrent gas stored underground is thirty-five per cent of the cost of that gas shown on the books and records of the public utility on the thirty-first day of December of the preceding year.

(D)(1) Except as provided in division (D)(2) of this section, the true value of the production equipment of an electric company and the true value of all taxable property of a rural electric company is the equipment's or property's cost as capitalized on the company's books and records less fifty per cent of that cost as an allowance for depreciation and obsolescence.

(2) The true value of the production equipment or energy conversion equipment of an electric company, rural electric company, or energy company purchased, transferred, or placed into service after October 5, 1999, is the purchase price of the equipment as capitalized on the company's books and records less composite annual allowances as prescribed by the tax commissioner.

(E) The true value of taxable property, except property of a railroad company, required by section 5727.06 of the Revised Code to be assessed by the tax commissioner shall not include the allowance for funds used during construction or interest during construction that has been capitalized on the public utility's books and records as part of the total cost of the taxable property. This division shall not apply to the taxable property of an electric company or a rural electric company, excluding transmission and distribution property, first placed into service after December 31, 2000, or to the taxable property a person purchases, which includes transfers, if that property was used in business by the seller prior to the purchase.

(F) The true value of watercraft owned or operated by a water transportation company shall be determined by multiplying the true value of the watercraft as determined under division (A) of this section by a fraction, the numerator of which is the number of revenue-earning miles traveled by the watercraft in the waters of this state and the denominator of which is the number of revenue-earning miles traveled by the watercraft in all waters.

(G) The cost of property subject to a sale and leaseback transaction is the cost of the property as capitalized on the books and records of the public utility owning the property immediately prior to

the sale and leaseback transaction.

(H) The cost as capitalized on the books and records of a public utility includes amounts capitalized that represent regulatory assets, if such amounts previously were included on the company's books and records as capitalized costs of taxable personal property.

(I) Any change in the composite annual allowances as prescribed by the commissioner on a prospective basis shall not be admissible in any judicial or administrative action or proceeding as evidence of value with regard to prior years' taxes. Information about the business, property, or transactions of any taxpayer obtained by the commissioner for the purpose of adopting or modifying the composite annual allowances shall not be subject to discovery or disclosure.

Sec. 5727.23. On or before the first Monday in October, annually, the tax commissioner shall assess the taxable property of each public utility and interexchange telecommunications company, and for tax year 2009 and thereafter of each public utility property lessor. If the taxpayer failed to file its annual report required by section 5727.08 of the Revised Code at least sixty days prior to the first Monday of October, the commissioner may make the assessment under this section within sixty days after the taxpayer files the report, but this does not preclude the commissioner from making an assessment without receiving the report.

The action of the tax commissioner shall be evidenced by a preliminary assessment that reflects the taxable value apportioned to each county and each taxing district in the county. The commissioner may amend the preliminary assessment as provided in this section. Each preliminary assessment and amended preliminary assessment shall be certified to the public utility, interexchange telecommunications company, or public utility property lessor, and to~~,~~ the auditor of each county to which taxable value has been apportioned.

The county auditor shall place the apportioned taxable value on the general tax list and duplicate of real and public utility property, and taxes shall be levied and collected thereon at the same rates and in the same manner as taxes are levied and collected on real property in the taxing district in question.

Unless a petition for reassessment of an assessment has been properly filed pursuant to section 5727.47 of the Revised Code, each preliminary assessment and, if amended, each preliminary assessment as last amended shall become final ninety days after certification of the preliminary assessment or thirty days after certification of the amended preliminary assessment, whichever is later. If a petition for reassessment is properly filed, the assessment shall become final when the tax commissioner issues a final determination.

Neither the certification of any preliminary or amended assessment nor the expiration of the period of time that makes any assessment final constitutes a final determination, assessment, reassessment, valuation, finding, computation, or order of the commissioner that is appealable under section 5717.02 of the Revised Code.

Sec. 5727.32. (A) For the purpose of the tax imposed by section 5727.30 of the Revised Code, the statement required by section 5727.31 of the Revised Code shall contain:

(1) The name of the company;

(2) The nature of the company, whether a person, association, or corporation, and under the laws of what state or country organized;

(3) The location of its principal office;

(4) The name and post-office address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(5) The name and post-office address of the chief officer or managing agent of the company in this state;

(6) The amount of the excise taxes paid or to be paid with the reports made during the current calendar year as provided by section 5727.31 of the Revised Code;

(7) In the case of telegraph companies:

(a) The gross receipts from all sources, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June, and the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding all of the following:

(i) All of the receipts derived wholly from interstate business or business done for or with the federal government;

(ii) The receipts of amounts billed on behalf of other entities~~;~~.

(b) The total gross receipts for such period from business done within this state.

(8) In the case of all public utilities subject to the tax imposed by section 5727.30 of the Revised Code, except telegraph companies:

(a) The gross receipts of the company, actually received, from all sources for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, but excluding both of the following:

(i) Receipts from interstate business or business done for the federal government;

(ii) Receipts from sales to another public utility for resale, provided such other public utility is subject to the tax levied by section 5727.24 or 5727.30 of the Revised Code;

(iii) Receipts of a combined company derived from operating as a natural gas company that is subject to the tax imposed by section 5727.24 of the Revised Code.

(b) The total gross receipts of the company, for the year next preceding the first day of May, in this state from business done within the state.

(B) The reports required by section 5727.31 of the Revised Code shall contain:

(1) The name and principal mailing address of the company;

(2) The total amount of the gross receipts excise taxes charged or levied as based upon its last preceding annual statement filed prior to the first day of January of the year in which such report is filed;

(3) The amount of the excise taxes due with the report as provided by section 5727.31 of the Revised Code.

Sec. 5727.33. (A) For the purpose of computing the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code, the entire gross receipts actually received from all sources for business done within this state are taxable gross receipts, excluding the receipts described in divisions (B), (C), and (D) of this section. The gross receipts for the tax year of each telegraph company shall be computed for the period of the first day of July prior to the tax year to the thirtieth day of June of the tax year. The gross receipts of each natural gas company, including a combined company's taxable

gross receipts attributed to a natural gas company activity, shall be computed in the manner required by section 5727.25 of the Revised Code. The gross receipts for the tax year of any other public utility subject to section 5727.30 of the Revised Code shall be computed for the period of the first day of May prior to the tax year to the thirtieth day of April of the tax year.

(B) In ascertaining and determining the gross receipts of each public utility subject to this section, the following gross receipts are excluded:

(1) All receipts derived wholly from interstate business;

(2) All receipts derived wholly from business done for or with the federal government;

(3) All receipts from the sale of merchandise;

(4) All receipts from sales to other public utilities, except railroad and telegraph companies, for resale, provided the other public utility is subject to the tax levied by section 5727.24 or 5727.30 of the Revised Code.

(C) In ascertaining and determining the gross receipts of a natural gas company, receipts billed on behalf of other entities are excluded. The tax imposed by section ~~5729.811~~ 5727.811 of the Revised Code, along with transportation and billing and collection fees charged to other entities, shall be included in the gross receipts of a natural gas company.

(D) In ascertaining and determining the gross receipts of a combined company subject to the tax imposed by section 5727.30 of the Revised Code, all receipts derived from operating as a natural gas company that are subject to the tax imposed by section 5727.24 of the Revised Code are excluded.

(E) Except as provided in division (F) of this section, the amount ascertained by the commissioner under this section, less a deduction of twenty-five thousand dollars, shall be the taxable gross receipts of such companies for business done within this state for that year.

(F) The amount ascertained under this section, less the following deduction, shall be the taxable gross receipts of a natural gas company or combined company subject to the tax imposed by section 5727.24 of the Revised Code for business done within this state:

(1) For a natural gas company that files quarterly returns of the tax imposed by section 5727.24 of the Revised Code, six thousand two hundred fifty dollars for each quarterly return;

(2) For a natural gas company that files an annual return of the tax imposed by section 5727.24 of the Revised Code, twenty-five thousand dollars for each annual return;

(3) For a combined company, twenty-five thousand dollars on the annual statement filed under section 5727.31 of the Revised Code. A combined company shall not be entitled to a deduction in computing gross receipts subject to the tax imposed by section 5727.24 of the Revised Code.

Sec. 5727.80. As used in sections 5727.80 to 5727.95 of the Revised Code:

(A) "Electric distribution company" means either of the following:

(1) A person who distributes electricity through a meter of an end user in this state or to an unmetered location in this state;

(2) The end user of electricity in this state, if the end user obtains electricity that is not distributed or transmitted to the end user by an electric distribution company that is required to remit the tax imposed by section 5727.81 of the Revised Code.

"Electric distribution company" does not include an end user of electricity in this state who self-generates electricity that is used directly by that end user on the same site that the electricity is

generated or a person that donates all of the electricity the person generates to a political subdivision of the state. Division (A)(2) of this section shall not apply to a political subdivision in this state that is the end user of electricity that is donated to the political subdivision.

(B) "Kilowatt hour" means one thousand watt hours of electricity.

(C) For an electric distribution company, "meter of an end user in this state" means the last meter used to measure the kilowatt hours distributed by an electric distribution company to a location in this state, or the last meter located outside of this state that is used to measure the kilowatt hours consumed at a location in this state.

(D) "Person" has the same meaning as in section 5701.01 of the Revised Code, but also includes a political subdivision of the state.

(E) "Municipal electric utility" means a municipal corporation that owns or operates a system for the distribution of electricity.

(F) "Qualified end user" means an end user of electricity that satisfies either of the following criteria:

(1) The end user uses more than three million kilowatt hours of electricity at one manufacturing location in this state for a calendar day for use in a qualifying manufacturing process.

(2) The end user uses electricity at a manufacturing location in this state for use in a chlor-alkali manufacturing process but, if the end user uses electricity distributed by a municipal electric utility, the end user can only be a "qualified end user" upon obtaining the consent of the legislative authority of the municipal corporation that owns or operates the utility.

(G) "Qualified regeneration" means a process to convert electricity to a form of stored energy by means such as using electricity to compress air for storage or to pump water to an elevated storage reservoir, if such stored energy is subsequently used to generate electricity for sale to others primarily during periods when there is peak demand for electricity.

(H) "Qualified regeneration meter" means the last meter used to measure electricity used in a qualified regeneration process.

(I) "Qualifying manufacturing process" means an electrochemical manufacturing process or a chlor-alkali manufacturing process.

(J) "Self-assessing purchaser" means a purchaser that meets all the requirements of, and pays the excise tax in accordance with, division (C) of section 5727.81 of the Revised Code.

(K) "Natural gas distribution company" means a natural gas company or a combined company~~, as defined in section 5727.01 of the Revised Code,~~ that is subject to the excise tax imposed by section 5727.24 of the Revised Code and that distributes natural gas through a meter of an end user in this state or to an unmetered location in this state.

(L) "MCF" means one thousand cubic feet.

(M) For a natural gas distribution company, "meter of an end user in this state" means the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, or the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state.

(N) "Flex customer" means an industrial or a commercial facility that has consumed more than one billion cubic feet of natural gas a year at a single location during any of the previous five years, or an industrial or a commercial end user of natural gas that purchases natural gas distribution

services from a natural gas distribution company at discounted rates or charges established in any of the following:

(1) A special arrangement subject to review and regulation by the public utilities commission under section 4905.31 of the Revised Code;

(2) A special arrangement with a natural gas distribution company pursuant to a municipal ordinance;

(3) A variable rate schedule that permits rates to vary between defined amounts, provided that the schedule is on file with the public utilities commission.

An end user that meets this definition on January 1, 2000, or thereafter is a "flex customer" for purposes of determining the rate of taxation under division (D) of section 5727.811 of the Revised Code.

(O) "Electrochemical manufacturing process" means the performance of an electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured. "Electrochemical manufacturing process" does not include a chlor-alkali manufacturing process.

(P) "Chlor-alkali manufacturing process" means a process that uses electricity to produce chlorine and other chemicals through the electrolysis of a salt solution.

Sec. 5727.83. (A) A natural gas distribution company, an electric distribution company, or a self-assessing purchaser shall remit each tax payment by electronic funds transfer as prescribed by divisions (B) and (C) of this section.

The tax commissioner shall notify each natural gas distribution company, electric distribution company, and self-assessing purchaser of the obligation to remit taxes by electronic funds transfer, shall maintain an updated list of those companies and purchasers, and shall timely certify to the treasurer of state the list and any additions thereto or deletions therefrom. Failure by the tax commissioner to notify a company or self-assessing purchaser subject to this section to remit taxes by electronic funds transfer does not relieve the company or self-assessing purchaser of its obligation to remit taxes in that manner.

(B) A natural gas distribution company, an electric distribution company, or a self-assessing purchaser required by this section to remit payments by electronic funds transfer shall remit such payments to the treasurer of state in the manner prescribed by rules adopted by the treasurer of state under section 113.061 of the Revised Code, and on or before the dates specified under section 5727.82 of the Revised Code. The payment of taxes by electronic funds transfer does not affect a company's or self-assessing purchaser's obligation to file a return as required under section 5727.82 of the Revised Code.

(C) A natural gas distribution company, an electric distribution company, or a self-assessing purchaser required by this section to remit taxes by electronic funds transfer may apply to the treasurer of state in the manner prescribed by the treasurer of state to be excused from that requirement. The treasurer of state may excuse the company or self-assessing purchaser from remittance by electronic funds transfer for good cause shown for the period of time requested by the company or self-assessing purchaser or for a portion of that period. The treasurer of state shall notify the tax commissioner and the company or self-assessing purchaser of the treasurer of state's decision as soon as is practicable.

(D) If a natural gas distribution company, an electric distribution company, or a self-assessing purchaser required by this section to remit taxes by electronic funds transfer remits those taxes by some means other than by electronic funds transfer as prescribed by this section and the rules adopted by the treasurer of state, and the treasurer of state determines that such failure was not due to reasonable cause or was due to willful neglect, the treasurer of state shall notify the tax commissioner of the failure to remit by electronic funds transfer and shall provide the commissioner with any information used in making that determination. The tax commissioner may collect an additional charge by assessment in the manner prescribed by section 5727.89 of the Revised Code. The additional charge shall equal five per cent of the amount of the taxes required to be paid by electronic funds transfer, but shall not exceed five thousand dollars. Any additional charge assessed under this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from the tax imposed under this chapter. The tax commissioner may abate all or a portion of such a charge and may adopt rules governing such abatements.

No additional charge shall be assessed under this division against a natural gas distribution company, an electric distribution company, or a self-assessing purchaser that has been notified of its obligation to remit taxes under this section and that remits its first two tax payments after such notification by some means other than electronic funds transfer. The additional charge may be assessed upon the remittance of any subsequent tax payment that the company or purchaser remits by ~~dome~~ some means other than electronic funds transfer.

Sec. 5727.84. No determinations, computations, certifications, or payments shall be made under this section after June 30, 2015.

(A) As used in this section and sections 5727.85~~,~~ and 5727.86~~, and 5727.87~~ of the Revised Code:

(1) "School district" means a city, local, or exempted village school district.

(2) "Joint vocational school district" means a joint vocational school district created under section 3311.16 of the Revised Code, and includes a cooperative education school district created under section 3311.52 or 3311.521 of the Revised Code and a county school financing district created under section 3311.50 of the Revised Code.

(3) "Local taxing unit" means a subdivision or taxing unit, as defined in section 5705.01 of the Revised Code, a park district created under Chapter 1545. of the Revised Code, or a township park district established under section 511.23 of the Revised Code, but excludes school districts and joint vocational school districts.

(4) "State education aid," for a school district, means the following:

(a) For fiscal years prior to fiscal year 2010, the sum of state aid amounts computed for the district under former sections 3317.029, 3317.052, and 3317.053 of the Revised Code and the following provisions, as they existed for the applicable fiscal year: divisions (A), (C)(1), (C)(4), (D), (E), and (F) of section 3317.022; divisions (B), (C), and (D) of section 3317.023; divisions (G), (L), and (N) of section 3317.024; and sections 3317.0216, 3317.0217, 3317.04, and 3317.05 of the Revised Code; and the adjustments required by: division (C) of section 3310.08; division (C)(2) of section 3310.41; division (C) of section 3314.08; division (D)(2) of section 3314.091; division (D) of former section 3314.13; divisions (E), (K), (L), (M), and (N) of section 3317.023; division (C) of section 3317.20; and sections 3313.979 and 3313.981 of the Revised Code. However, when

calculating state education aid for a school district for fiscal years 2008 and 2009, include the amount computed for the district under Section 269.20.80 of H.B. 119 of the 127th general assembly, as subsequently amended, instead of division (D) of section 3317.022 of the Revised Code; and include amounts calculated under Section 269.30.80 of H.B. 119 of the 127th general assembly, as subsequently amended.

(b) For fiscal years 2010 and 2011, the sum of the amounts computed for the district under former sections 3306.052, 3306.12, 3306.13, 3306.19, 3306.191, 3306.192, 3317.052, and 3317.053 of the Revised Code and the following provisions, as they existed for the applicable fiscal year: division (G) of section 3317.024; section 3317.05 of the Revised Code; and the adjustments required by division (C) of section 3310.08; division (C)(2) of section 3310.41; division (C) of section 3314.08; division (D)(2) of section 3314.091; division (D) of former section 3314.13; divisions (E), (K), (L), (M), and (N) of section 3317.023; division (C) of section 3317.20; and sections 3313.979, 3313.981, and 3326.33 of the Revised Code.

(c) For fiscal years 2012 and 2013, the amount paid in accordance with the section of H.B. 153 of the 129th general assembly entitled "FUNDING FOR CITY, EXEMPTED VILLAGE, AND LOCAL SCHOOL DISTRICTS" and the adjustments required by division (C) of section 3310.08; division (C)(2) of section 3310.41; section 3310.55; division (C) of section 3314.08; division (D)(2) of section 3314.091; division (D) of former section 3314.13; divisions (B), (H), (I), (J), and (K) of section 3317.023; division (C) of section 3317.20; and sections 3313.979 and 3313.981 of the Revised Code;

(d) For fiscal year 2014 and each fiscal year thereafter, the sum of amounts computed for and paid to the district under section 3317.022 of the Revised Code; and the adjustments required by division (C) of section 3310.08, division (C)(2) of section 3310.41, section 3310.55, division (C) of section 3314.08, division (D)(2) of section 3314.091, divisions (B), (H), (J), and (K) of section 3317.023, and sections 3313.978, 3313.981, 3317.0212, 3317.0213, 3317.0214, and 3326.33 of the Revised Code. However, for fiscal years 2014 and 2015, the amount computed for the district under the section of this act entitled "TRANSITIONAL AID FOR CITY, LOCAL, AND EXEMPTED VILLAGE SCHOOL DISTRICTS" also shall be included.

(5) "State education aid," for a joint vocational school district, means the following:

(a) For fiscal years prior to fiscal year 2010, the sum of the state aid amounts computed for the district under division (N) of section 3317.024 and section 3317.16 of the Revised Code. However, when calculating state education aid for a joint vocational school district for fiscal years 2008 and 2009, include the amount computed for the district under Section 269.30.90 of H.B. 119 of the 127th general assembly, as subsequently amended.

(b) For fiscal years 2010 and 2011, the amount computed for the district in accordance with the section of H.B. 1 of the 128th general assembly entitled "FUNDING FOR JOINT VOCATIONAL SCHOOL DISTRICTS."

(c) For fiscal years 2012 and 2013, the amount paid in accordance with the section of H.B. 153 of the 129th general assembly entitled "FUNDING FOR JOINT VOCATIONAL SCHOOL DISTRICTS."

(d) For fiscal year 2014 and each fiscal year thereafter, the amount computed for the district under section 3317.16 of the Revised Code; except that, for fiscal years 2014 and 2015, the amount

computed for the district under the section of this act entitled "TRANSITIONAL AID FOR JOINT VOCATIONAL SCHOOL DISTRICTS" shall be included.

(6) "State education aid offset" means the amount determined for each school district or joint vocational school district under division (A)(1) of section 5727.85 of the Revised Code.

(7) "Recognized valuation" means the amount computed for a school district pursuant to section 3317.015 of the Revised Code.

(8) "Electric company tax value loss" means the amount determined under division (D) of this section.

(9) "Natural gas company tax value loss" means the amount determined under division (E) of this section.

(10) "Tax value loss" means the sum of the electric company tax value loss and the natural gas company tax value loss.

(11) "Fixed-rate levy" means any tax levied on property other than a fixed-sum levy.

(12) "Fixed-rate levy loss" means the amount determined under division (G) of this section.

(13) "Fixed-sum levy" means a tax levied on property at whatever rate is required to produce a specified amount of tax money or levied in excess of the ten-mill limitation to pay debt charges, and includes school district emergency levies charged and payable pursuant to section 5705.194 of the Revised Code.

(14) "Fixed-sum levy loss" means the amount determined under division (H) of this section.

(15) "Consumer price index" means the consumer price index (all items, all urban consumers) prepared by the bureau of labor statistics of the United States department of labor.

(16) "Total resources" and "total library resources" have the same meanings as in section 5751.20 of the Revised Code.

(17) "2011 current expense S.B. 3 allocation" means the sum of payments received by a school district or joint vocational school district in fiscal year 2011 for current expense levy losses pursuant to division (C)(2) of section 5727.85 of the Revised Code. If a fixed-rate levy eligible for reimbursement is not charged and payable in any year after tax year 2010, "2011 current expense S.B. 3 allocation" used to compute payments to be made under division (C)(3) of section 5727.85 of the Revised Code in the tax years following the last year the levy is charged and payable shall be reduced to the extent that those payments are attributable to the fixed-rate levy loss of that levy.

(18) "2010 current expense S.B. 3 allocation" means the sum of payments received by a municipal corporation in calendar year 2010 for current expense levy losses pursuant to division (A)(1) of section 5727.86 of the Revised Code, excluding any such payments received for current expense levy losses attributable to a tax levied under section 5705.23 of the Revised Code. If a fixed-rate levy eligible for reimbursement is not charged and payable in any year after tax year 2010, "2010 current expense S.B. 3 allocation" used to compute payments to be made under division (A)(1)(d) or (e) of section 5727.86 of the Revised Code in the tax years following the last year the levy is charged and payable shall be reduced to the extent that those payments are attributable to the fixed-rate levy loss of that levy.

(19) "2010 S.B. 3 allocation" means the sum of payments received by a local taxing unit during calendar year 2010 pursuant to division (A)(1) of section 5727.86 of the Revised Code, excluding any such payments received for fixed-rate levy losses attributable to a tax levied under

section 5705.23 of the Revised Code. If a fixed-rate levy eligible for reimbursement is not charged and payable in any year after tax year 2010, "2010 S.B. 3 allocation" used to compute payments to be made under division (A)(1)(d) or (e) of section 5727.86 of the Revised Code in the tax years following the last year the levy is charged and payable shall be reduced to the extent that those payments are attributable to the fixed-rate levy loss of that levy.

(20) "Total S.B. 3 allocation" means, in the case of a school district or joint vocational school district, the sum of the payments received in fiscal year 2011 pursuant to divisions (C)(2) and (D) of section 5727.85 of the Revised Code. In the case of a local taxing unit, "total S.B. 3 allocation" means the sum of payments received by the unit in calendar year 2010 pursuant to divisions (A)(1) and (4) of section 5727.86 of the Revised Code, excluding any such payments received for fixed-rate levy losses attributable to a tax levied under section 5705.23 of the Revised Code. If a fixed-rate levy eligible for reimbursement is not charged and payable in any year after tax year 2010, "total S.B. 3 allocation" used to compute payments to be made under division (C)(3) of section 5727.85 or division (A)(1)(d) or (e) of section 5727.86 of the Revised Code in the tax years following the last year the levy is charged and payable shall be reduced to the extent that those payments are attributable to the fixed-rate levy loss of that levy as would be computed under division (C)(2) of section 5727.85 or division (A)(1)(b) of section 5727.86 of the Revised Code.

(21) "2011 non-current expense S.B. 3 allocation" means the difference of a school district's or joint vocational school district's total S.B. 3 allocation minus the sum of the school district's 2011 current expense S.B. 3 allocation and the portion of the school district's total S.B. 3 allocation constituting reimbursement for debt levies pursuant to division (D) of section 5727.85 of the Revised Code.

(22) "2010 non-current expense S.B. 3 allocation" means the difference of a municipal corporation's total S.B. 3 allocation minus the sum of its 2010 current expense S.B. 3 allocation and the portion of its total S.B. 3 allocation constituting reimbursement for debt levies pursuant to division (A)(4) of section 5727.86 of the Revised Code.

(23) "S.B. 3 allocation for library purposes" means, in the case of a county, municipal corporation, school district, or township public library that receives the proceeds of a tax levied under section 5705.23 of the Revised Code, the sum of the payments received by the public library in calendar year 2010 pursuant to section 5727.86 of the Revised Code for fixed-rate levy losses attributable to a tax levied under section 5705.23 of the Revised Code. If a fixed-rate levy authorized under section 5705.23 of the Revised Code that is eligible for reimbursement is not charged and payable in any year after tax year 2010, "S.B. 3 allocation for library purposes" used to compute payments to be made under division (A)(1)(f) of section 5727.86 of the Revised Code in the tax years following the last year the levy is charged and payable shall be reduced to the extent that those payments are attributable to the fixed-rate levy loss of that levy as would be computed under division (A)(1)(b) of section 5727.86 of the Revised Code.

(24) "Threshold per cent" means, in the case of a school district or joint vocational school district, two per cent for fiscal year 2012 and four per cent for fiscal years 2013 and thereafter. In the case of a local taxing unit or public library that receives the proceeds of a tax levied under section 5705.23 of the Revised Code, "threshold per cent" means two per cent for calendar year 2011, four per cent for calendar year 2012, and six per cent for calendar years 2013 and thereafter.

(B) The kilowatt-hour tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed by section 5727.81 of the Revised Code. All money in the kilowatt-hour tax receipts fund shall be credited as follows:

	1	2	3	4
A	Fiscal Year	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
B	2001-2011	63.0%	25.4%	11.6%
C	2012-2015	88.0%	9.0%	3.0%

(C) The natural gas tax receipts fund is hereby created in the state treasury and shall consist of money arising from the tax imposed by section 5727.811 of the Revised Code. All money in the fund shall be credited as follows for fiscal years before fiscal year 2012:

(1) Sixty-eight and seven-tenths per cent shall be credited to the school district property tax replacement fund for the purpose of making the payments described in section 5727.85 of the Revised Code.

(2) Thirty-one and three-tenths per cent shall be credited to the local government property tax replacement fund for the purpose of making the payments described in section 5727.86 of the Revised Code.

(D) Not later than January 1, 2002, the tax commissioner shall determine for each taxing district its electric company tax value loss, which is the sum of the applicable amounts described in divisions (D)(1) to (4) of this section:

(1) The difference obtained by subtracting the amount described in division (D)(1)(b) from the amount described in division (D)(1)(a) of this section.

(a) The value of electric company and rural electric company tangible personal property as assessed by the tax commissioner for tax year 1998 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 1999, and as apportioned to the taxing district for tax year 1998;

(b) The value of electric company and rural electric company tangible personal property as assessed by the tax commissioner for tax year 1998 had the property been apportioned to the taxing district for tax year 2001, and assessed at the rates in effect for tax year 2001.

(2) The difference obtained by subtracting the amount described in division (D)(2)(b) from the amount described in division (D)(2)(a) of this section.

(a) The three-year average for tax years 1996, 1997, and 1998 of the assessed value from nuclear fuel materials and assemblies assessed against a person under Chapter 5711. of the Revised

Code from the leasing of them to an electric company for those respective tax years, as reflected in the preliminary assessments;

(b) The three-year average assessed value from nuclear fuel materials and assemblies assessed under division (D)(2)(a) of this section for tax years 1996, 1997, and 1998, as reflected in the preliminary assessments, using an assessment rate of twenty-five per cent.

(3) In the case of a taxing district having a nuclear power plant within its territory, any amount, resulting in an electric company tax value loss, obtained by subtracting the amount described in division (D)(1) of this section from the difference obtained by subtracting the amount described in division (D)(3)(b) of this section from the amount described in division (D)(3)(a) of this section.

(a) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2000 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2001, and as apportioned to the taxing district for tax year 2000;

(b) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2001 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2002, and as apportioned to the taxing district for tax year 2001.

(4) In the case of a taxing district having a nuclear power plant within its territory, the difference obtained by subtracting the amount described in division (D)(4)(b) of this section from the amount described in division (D)(4)(a) of this section, provided that such difference is greater than ten per cent of the amount described in division (D)(4)(a) of this section.

(a) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2005 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2006, and as apportioned to the taxing district for tax year 2005;

(b) The value of electric company tangible personal property as assessed by the tax commissioner for tax year 2006 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2007, and as apportioned to the taxing district for tax year 2006.

(E) Not later than January 1, 2002, the tax commissioner shall determine for each taxing district its natural gas company tax value loss, which is the sum of the amounts described in divisions (E)(1) and (2) of this section:

(1) The difference obtained by subtracting the amount described in division (E)(1)(b) from the amount described in division (E)(1)(a) of this section.

(a) The value of all natural gas company tangible personal property, other than property described in division (E)(2) of this section, as assessed by the tax commissioner for tax year 1999 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2000, and apportioned to the taxing district for tax year 1999;

(b) The value of all natural gas company tangible personal property, other than property described in division (E)(2) of this section, as assessed by the tax commissioner for tax year 1999 had the property been apportioned to the taxing district for tax year 2001, and assessed at the rates in effect for tax year 2001.

(2) The difference in the value of current gas obtained by subtracting the amount described in division (E)(2)(b) from the amount described in division (E)(2)(a) of this section.

(a) The three-year average assessed value of current gas as assessed by the tax commissioner

for tax years 1997, 1998, and 1999 on a preliminary assessment, or an amended preliminary assessment if issued prior to March 1, 2001, and as apportioned in the taxing district for those respective years;

(b) The three-year average assessed value from current gas under division (E)(2)(a) of this section for tax years 1997, 1998, and 1999, as reflected in the preliminary assessment, using an assessment rate of twenty-five per cent.

(F) The tax commissioner may request that natural gas companies, electric companies, and rural electric companies file a report to help determine the tax value loss under divisions (D) and (E) of this section. The report shall be filed within thirty days of the commissioner's request. A company that fails to file the report or does not timely file the report is subject to the penalty in section 5727.60 of the Revised Code.

(G) Not later than January 1, 2002, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its fixed-rate levy loss, which is the sum of its electric company tax value loss multiplied by the tax rate in effect in tax year 1998 for fixed-rate levies and its natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999 for fixed-rate levies.

(H) Not later than January 1, 2002, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its fixed-sum levy loss, which is the amount obtained by subtracting the amount described in division (H)(2) of this section from the amount described in division (H)(1) of this section:

(1) The sum of the electric company tax value loss multiplied by the tax rate in effect in tax year 1998, and the natural gas company tax value loss multiplied by the tax rate in effect in tax year 1999, for fixed-sum levies for all taxing districts within each school district, joint vocational school district, and local taxing unit. For the years 2002 through 2006, this computation shall include school district emergency levies that existed in 1998 in the case of the electric company tax value loss, and 1999 in the case of the natural gas company tax value loss, and all other fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss and continue to be charged in the tax year preceding the distribution year. For the years 2007 through 2016 in the case of school district emergency levies, and for all years after 2006 in the case of all other fixed-sum levies, this computation shall exclude all fixed-sum levies that existed in 1998 in the case of the electric company tax value loss and 1999 in the case of the natural gas company tax value loss, but are no longer in effect in the tax year preceding the distribution year. For the purposes of this section, an emergency levy that existed in 1998 in the case of the electric company tax value loss, and 1999 in the case of the natural gas company tax value loss, continues to exist in a year beginning on or after January 1, 2007, but before January 1, 2017, if, in that year, the board of education levies a school district emergency levy for an annual sum at least equal to the annual sum levied by the board in tax year 1998 or 1999, respectively, less the amount of the payment certified under this division for 2002.

(2) The total taxable value in tax year 1999 less the tax value loss in each school district, joint vocational school district, and local taxing unit multiplied by one-fourth of one mill.

If the amount computed under division (H) of this section for any school district, joint vocational school district, or local taxing unit is greater than zero, that amount shall equal the fixed-

sum levy loss reimbursed pursuant to division (F) of section 5727.85 of the Revised Code or division (A)(2) of section 5727.86 of the Revised Code, and the one-fourth of one mill that is subtracted under division (H)(2) of this section shall be apportioned among all contributing fixed-sum levies in the proportion of each levy to the sum of all fixed-sum levies within each school district, joint vocational school district, or local taxing unit.

(I) Notwithstanding divisions (D), (E), (G), and (H) of this section, in computing the tax value loss, fixed-rate levy loss, and fixed-sum levy loss, the tax commissioner shall use the greater of the 1998 tax rate or the 1999 tax rate in the case of levy losses associated with the electric company tax value loss, but the 1999 tax rate shall not include for this purpose any tax levy approved by the voters after June 30, 1999, and the tax commissioner shall use the greater of the 1999 or the 2000 tax rate in the case of levy losses associated with the natural gas company tax value loss.

(J) Not later than January 1, 2002, the tax commissioner shall certify to the department of education the tax value loss determined under divisions (D) and (E) of this section for each taxing district, the fixed-rate levy loss calculated under division (G) of this section, and the fixed-sum levy loss calculated under division (H) of this section. The calculations under divisions (G) and (H) of this section shall separately display the levy loss for each levy eligible for reimbursement.

(K) Not later than September 1, 2001, the tax commissioner shall certify the amount of the fixed-sum levy loss to the county auditor of each county in which a school district with a fixed-sum levy loss has territory.

Sec. 5729.98. (A) To provide a uniform procedure for calculating the amount of tax due under this chapter, a taxpayer shall claim any credits and offsets against tax liability to which it is entitled in the following order:

~~(1)~~ The credit for an insurance company or insurance company group under section 5729.031 of the Revised Code;

~~(2)~~ The credit for eligible employee training costs under section 5729.07 of the Revised Code;

~~(3)~~ The credit for purchases of qualified low-income community investments under section 5729.16 of the Revised Code;

~~(4)~~ The nonrefundable job retention credit under division (B) of section 122.171 of the Revised Code;

~~(5)~~ The nonrefundable credit for investments in rural business growth funds under section 122.152 of the Revised Code;

~~(6)~~ The offset of assessments by the Ohio life and health insurance guaranty association against tax liability permitted by section 3956.20 of the Revised Code;

~~(7)~~ The refundable credit for rehabilitating a historic building under section 5729.17 of the Revised Code~~.~~;

~~(8)~~ The refundable credit for Ohio job retention under former division (B)(2) or (3) of section 122.171 of the Revised Code as those divisions existed before September 29, 2015, the effective date of the amendment of this section by H.B. 64 of the 131st general assembly;

~~(9)~~ The refundable credit for Ohio job creation under section 5729.032 of the Revised Code;

~~(10)~~ The refundable credit under section 5729.08 of the Revised Code for losses on loans made under the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a taxable year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5733.042. (A) As used in this section:

(1) "Affiliated group" has the same meaning as in section 1504 of the Internal Revenue Code.

(2) "Asset value" means the adjusted basis of assets as determined in accordance with Subchapter O of the Internal Revenue Code and the Treasury Regulations thereunder.

(3) "Intangible expenses and costs" include expenses, losses, and costs for, related to, or in connection directly or indirectly with the direct or indirect acquisition of, the direct or indirect use of, the direct or indirect maintenance or management of, the direct or indirect ownership of, the direct or indirect sale of, the direct or indirect exchange of, or any other direct or indirect disposition of intangible property to the extent such amounts are allowed as deductions or costs in determining taxable income before operating loss deduction and special deductions for the taxable year under the Internal Revenue Code. Such expenses and costs include, but are not limited to, losses related to or incurred in connection directly or indirectly with factoring transactions, losses related to or incurred in connection directly or indirectly with discounting transactions, royalty, patent, technical, and copyright fees, licensing fees, and other similar expenses and costs.

(4) "Interest expenses and costs" include but are not limited to amounts directly or indirectly allowed as deductions under section 163 of the Internal Revenue Code for purposes of determining taxable income under the Internal Revenue Code.

(5) "Member" has the same meaning as in U.S. Treasury Regulation section 1.1502-1.

(6) "Related member" means a person that, with respect to the taxpayer during all or any portion of the taxable year, is a "related entity" as defined in division (I)(12)(c) of section 5733.04 of the Revised Code, is a component member as defined in section 1563(b) of the Internal Revenue Code, or is a person to or from whom there is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue Code except, for purposes of determining whether a person is a related member under this division, "twenty per cent" shall be substituted for "5 per cent" wherever "5 per cent" appears in section 1563(e) of the Internal Revenue Code.

(B) This section applies to all corporations for tax years 1999 and thereafter. For tax years prior to 1999, this section applies only to a corporation that has, or is a member of an affiliated group that has, or is a member of an affiliated group with another member that has, one or more of the following:

(1) Gross sales, including sales to other members of the affiliated group, during the taxable year of at least fifty million dollars;

(2) Total assets whose asset value at any time during the taxable year is at least twenty-five million dollars;

(3) Taxable income before operating loss deduction and special deductions during the taxable year of at least five hundred thousand dollars.

(C) For purposes of computing its net income under division (I) of section 5733.04 of the Revised Code, the corporation shall add interest expenses and costs and intangible expenses and

costs directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more of the following related members:

(1) Any related member whose activities, in any one state, are primarily limited to the maintenance and management of intangible investments or of the intangible investments of corporations, business trusts, or other entities registered as investment companies under the "Investment Company Act of 1940," 15 U.S.C. 80a-1 et seq., as amended, and the collection and distribution of the income from such investments or from tangible property physically located outside such state. For purposes of division (C)(1) of this section, "intangible investments" includes, without limitation, investments in stocks, bonds, notes, and other debt obligations, including debt obligations of related members, interests in partnerships, patents, patent applications, trademarks, trade names, and similar types of intangible assets.

(2) Any related member that is a personal holding company as defined in section 542 of the Internal Revenue Code without regard to the stock ownership requirements set forth in section 542(a)(2) of the Internal Revenue Code;

(3) Any related member that is not a corporation and is directly, indirectly, constructively, or beneficially owned in whole or in part by a personal holding company as defined in section 542 of the Internal Revenue Code without regard to the stock ownership requirements set forth in section 542(a)(2) of the Internal Revenue Code;

(4) Any related member that is a foreign personal holding company as defined in section 552 of the Internal Revenue Code;

(5) Any related member that is not a corporation and is directly, indirectly, constructively, or beneficially owned in whole or in part by a foreign personal holding company as defined in section 552 of the Internal Revenue Code;

(6) Any related member if that related member or another related member directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, another related member any interest expenses and costs or intangible expenses and costs in an amount less than, equal to, or greater than such amounts received from the corporation. Division (C)(6) of this section applies only if, within a one-hundred-twenty-month period commencing three years prior to the beginning of the tax year, a related member directly or indirectly paid, accrued, or incurred such amounts or losses with respect to one or more direct or indirect transactions with an entity described in divisions (C)(1) to (5) of this section. A rebuttable presumption exists that a related member did so pay, accrue, or incur such amounts or losses with respect to one or more direct or indirect transactions with an entity described in divisions (C)(1) to (5) of this section. A corporation can rebut this presumption only with a preponderance of the evidence to the contrary.

(7) Any related member that, with respect to indebtedness directly or indirectly owed by the corporation to the related member, directly or indirectly charged or imposed on the corporation an excess interest rate. If the related member has charged or imposed on the corporation an excess interest rate, the adjustment required by division (C)(7) of this section with respect to such interest expenses and costs directly or indirectly paid, accrued, or incurred to the related member in connection with such indebtedness does not include so much of such interest expenses and costs that the corporation would have directly or indirectly paid, accrued, or incurred if the related member had

charged or imposed the highest possible interest rate that would not have been an excess interest rate. For purposes of division (C)(7) of this section, an excess interest rate is an annual rate that exceeds by more than three per cent the greater of the rate per annum prescribed by section 5703.47 of the Revised Code in effect at the time of the origination of the indebtedness, or the rate per annum prescribed by section 5703.47 of the Revised Code in effect at the time the corporation paid, accrued, or incurred the interest expense or cost to the related member.

(D)(1) In making the adjustment required by division (C) of this section, the corporation shall make the adjustment required by section 5733.057 of the Revised Code. The adjustments required by division (C) of this section are not required if either of the following applies:

(a) The corporation establishes by clear and convincing evidence that the adjustments are unreasonable.

(b) The corporation and the tax commissioner agree in writing to the application or use of alternative adjustments and computations to more properly reflect the base required to be determined in accordance with division (B) of section 5733.05 of the Revised Code. Nothing in division (D)(1)(b) of this section shall be construed to limit or negate the tax commissioner's authority to otherwise enter into agreements and compromises otherwise allowed by law.

(2) The adjustments required by divisions (C)(1) to (5) of this section do not apply to such portion of interest expenses and costs and intangible expenses and costs that the corporation can establish by the preponderance of the evidence meets both of the following:

(a) The related member during the same taxable year directly or indirectly paid, accrued, or incurred such portion to a person who is not a related member.

(b) The transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

(3) The adjustments required by division (C)(6) of this section do not apply to such portion of interest expenses and costs and intangible expenses and costs that the corporation can establish by the preponderance of the evidence meets both of the following:

(a) The entity described in any of divisions (C)(1) to (6) of this section to whom the related member directly or indirectly paid, accrued, or incurred such portion, in turn during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person who is not a related member, and

(b) The transaction or transactions giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation, the related member, and the entity described in any of divisions (C)(1) to (5) <u>of this section</u> did not have as a principal purpose the avoidance of any portion of the tax due under this chapter.

(4) The adjustments required by division (C) of this section apply except to the extent that the increased tax, if any, attributable to such adjustments would have been avoided if both the corporation and the related member had been eligible to make and had timely made the election to combine in accordance with division (B) of section 5733.052 of the Revised Code.

(E) Except as otherwise provided in division (F) of this section, if, on the day that is one year after the day the corporation files its report, the corporation has not made the adjustment required by this section or has not fully paid the tax and interest, if any, imposed by this chapter and attributable

to such adjustment, the corporation is subject to a penalty equal to twice the interest charged under division (A) of section 5733.26 of the Revised Code for the delinquent payment of such tax and interest. For the purpose of the computation of the penalty imposed by this division, such penalty shall be deemed to be part of the tax due on the dates prescribed by this chapter without regard to the one-year period set forth in this division. The penalty imposed by this division is not in lieu of but is in addition to all other penalties, other similar charges, and interest imposed by this chapter. The tax commissioner may waive, abate, modify, or refund, with interest, all or any portion of the penalty imposed by this division only if the corporation establishes beyond a reasonable doubt that both the failure to fully comply with this section and the failure to fully pay such tax and interest within one year after the date the corporation files its report were not in any part attributable to the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

(F)(1) For purposes of this division, "tax differential" means the difference between the tax that is imposed by section 5733.06 of the Revised Code and that is attributable to the adjustment required by this section and the amount paid that is so attributable, prior to the day that is one year after the day the corporation files its report.

(2) The penalty imposed by division (E) of this section does not apply if the tax differential meets both of the following requirements:

(a) The tax differential is less than ten per cent of the tax imposed by section 5733.06 of the Revised Code; and

(b) The difference is less than fifty thousand dollars.

(3) Nothing in division (F) of this section shall be construed to waive, abate, or modify any other penalties, other similar charges, or interest imposed by other sections of this chapter.

(G) Nothing in this section shall require a corporation to add to its net income more than once any amount of interest expenses and costs or intangible expenses and costs that the corporation pays, accrues, or incurs to a related member described in division (C) of this section.

Sec. 5733.05. As used in this section, "qualified research" means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of materials or products for quality control, historical research, or literary research. "Product" as used in this paragraph does not include services or intangible property.

The annual report determines the value of the issued and outstanding shares of stock of the taxpayer, which under division (A) or divisions (B) and (C) of this section is the base or measure of the franchise tax liability. Such determination shall be made as of the date shown by the report to have been the beginning of the corporation's annual accounting period that includes the first day of January of the tax year. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is a financial institution shall be deemed to be the value as calculated in accordance with division (A) of this section. For the purposes of this chapter, the value of the issued and outstanding shares of stock of any corporation that is not a financial institution shall be deemed to be the values as calculated in accordance with divisions (B) and (C) of this section. Except as otherwise required by this section or section 5733.056 of the Revised Code, the value of a taxpayer's issued and outstanding shares of stock under division (A) or (C) of this section does not

include any amount that is treated as a liability under generally accepted accounting principles.

(A) The total value, as shown by the books of the financial institution, of its capital, surplus, whether earned or unearned, undivided profits, and reserves shall be determined as prescribed by section 5733.056 of the Revised Code for tax years 1998 and thereafter.

(B) The sum of the corporation's net income during the corporation's taxable year, allocated or apportioned to this state as prescribed in divisions (B)(1) and (2) of this section, and subject to sections 5733.052, 5733.053, 5733.057, 5733.058, 5733.059, and 5733.0510 of the Revised Code:

(1) The net nonbusiness income allocated or apportioned to this state as provided by section 5733.051 of the Revised Code.

(2) The amount of Ohio apportioned net business income, which shall be calculated by multiplying the corporation's net business income by a fraction. The numerator of the fraction is the sum of the following products: the property factor multiplied by twenty, the payroll factor multiplied by twenty, and the sales factor multiplied by sixty. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by twenty if the property factor has a denominator of zero, by twenty if the payroll factor has a denominator of zero, and by sixty if the sales factor has a denominator of zero.

The property, payroll, and sales factors shall be determined as follows, but the numerator and the denominator of the factors shall not include the portion of any property, payroll, and sales otherwise includible in the factors to the extent that the portion relates to, or is used in connection with, the production of nonbusiness income allocated under section 5733.051 of the Revised Code:

(a) The property factor is a fraction computed as follows:

The numerator of the fraction is the average value of the corporation's real and tangible personal property owned or rented, and used in the trade or business in this state during the taxable year, and the denominator of the fraction is the average value of all the corporation's real and tangible personal property owned or rented, and used in the trade or business everywhere during such year. Real and tangible personal property used in the trade or business includes, but is not limited to, real and tangible personal property that the corporation rents, subrents, leases, or subleases to others if the income or loss from such rentals, subrentals, leases, or subleases is business income. There shall be excluded from the numerator and denominator of the fraction the original cost of all of the following property within Ohio: property with respect to which a "pollution control facility" certificate has been issued pursuant to section 5709.21 of the Revised Code; property with respect to which an "industrial water pollution control certificate" has been issued pursuant to that section or former section 6111.31 of the Revised Code; and property used exclusively during the taxable year for qualified research.

(i) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals.

(ii) The average value of property shall be determined by averaging the values at the beginning and the end of the taxable year, but the tax commissioner may require the averaging of monthly values during the taxable year, if reasonably required to reflect properly the average value of the corporation's property.

(b) The payroll factor is a fraction computed as follows:

The numerator of the fraction is the total amount paid in this state during the taxable year by the corporation for compensation, and the denominator of the fraction is the total compensation paid everywhere by the corporation during such year. There shall be excluded from the numerator and the denominator of the payroll factor the total compensation paid in this state to employees who are primarily engaged in qualified research.

(i) Compensation means any form of remuneration paid to an employee for personal services.

(ii) Compensation is paid in this state if: (I) the recipient's service is performed entirely within this state, (II) the recipient's service is performed both within and without this state, but the service performed without this state is incidental to the recipient's service within this state, (III) some of the service is performed within this state and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in this state.

(iii) Compensation is paid in this state to any employee of a common or contract motor carrier corporation, who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by such employee within the state bears to the total mileage traveled by such employee everywhere during the taxable year.

(c) The sales factor is a fraction computed as follows:

Except as provided in this section, the numerator of the fraction is the total sales in this state by the corporation during the taxable year or part thereof, and the denominator of the fraction is the total sales by the corporation everywhere during such year or part thereof. In computing the numerator and denominator of the fraction, the following shall be eliminated from the fraction: receipts and any related gains or losses from the sale or other disposal of excluded assets; dividends or distributions; and interest or other similar amounts received for the use of, or for the forbearance of the use of, money. Also, in computing the numerator and denominator of the sales factor, in the case of a corporation owning at least eighty per cent of the issued and outstanding common stock of one or more insurance companies or public utilities, except an electric company and a combined company, and, for tax years 2005 and thereafter, a telephone company, or owning at least twenty-five per cent of the issued and outstanding common stock of one or more financial institutions, receipts received by the corporation from such utilities, insurance companies, and financial institutions shall be eliminated. As used in this division, "excluded assets" means property that is either: intangible property, other than trademarks, trade names, patents, copyrights, and similar intellectual property; or tangible personal property or real property where that property is a capital asset or an asset described in section 1231 of the Internal Revenue Code, without regard to the holding period specified therein.

(i) For the purpose of this section and section 5733.03 of the Revised Code, receipts not eliminated or excluded from the fraction shall be sitused as follows:

Receipts from rents and royalties from real property located in this state shall be sitused to this state.

Receipts from rents and royalties of tangible personal property, to the extent the tangible personal property is used in this state, shall be sitused to this state.

Receipts from the sale of electricity and of electric transmission and distribution services shall be sitused to this state in the manner provided under section 5733.059 of the Revised Code.

Receipts from the sale of real property located in this state shall be sitused to this state.

Receipts from the sale of tangible personal property shall be sitused to this state if such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

(ii) Receipts from all other sales not eliminated or excluded from the fraction shall be sitused to this state as follows:

Receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property shall be sitused to this state to the extent that the receipts are based on the amount of use of that property in this state. If the receipts are not based on the amount of use of that property, but rather on the right to use the property and the payor has the right to use the property in this state, then the receipts from the sale, exchange, disposition, or other grant of the right to use such property shall be sitused to this state to the extent the receipts are based on the right to use the property in this state.

Receipts from the sale of services, and receipts from any other sales not eliminated or excluded from the sales factor and not otherwise sitused under division (B)(2)(c) of this section, shall be sitused to this state in the proportion to the purchaser's benefit, with respect to the sale, in this state to the purchaser's benefit, with respect to the sale, everywhere. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased shall be paramount in determining the proportion of the benefit in this state to the benefit everywhere.

(iii) Income from receipts eliminated or excluded from the sales factor under division (B)(2)(c) of this section shall not be presumed to be nonbusiness income.

(d) If the allocation and apportionment provisions of division (B) of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may request, which request must be in writing and must accompany the report, a timely filed petition for reassessment, or a timely filed amended report, or the tax commissioner may require, in respect to all or any part of the taxpayer's allocated or apportioned base, if reasonable, any one or more of the following:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's allocated or apportioned base in this state.

An alternative method will be effective only with approval by the tax commissioner.

Nothing in this section shall be construed to extend any statute of limitations set forth in this chapter.

(e) The tax commissioner may adopt rules providing for alternative allocation and apportionment methods, and alternative calculations of a corporation's base, that apply to corporations engaged in telecommunications.

(C)(1) The total value, as shown on the books of each corporation that is not a ~~qualified~~ qualifying holding company, of the net book value of the corporation's assets less the net carrying value of its liabilities, and excluding from the corporation's assets land devoted exclusively to agricultural use as of the first Monday of June in the corporation's taxable year as determined by the county auditor of the county in which the land is located pursuant to section 5713.31 of the Revised Code, and making any adjustment required by division (D) of this section. For the purposes of determining that total value, any reserves shown on the corporation's books shall be considered liabilities or contra assets, as the case may be, except for any reserves that are deemed appropriations of retained earnings under generally accepted accounting principles.

(2) The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by multiplying the amount determined under division (C)(1) of this section by the fraction determined under divisions (B)(2)(a) to (c) of this section and, if applicable, divisions (B)(2)(d)(ii) and (iii) of this section, and without regard to section 5733.052 of the Revised Code, but substituting "net worth" for "net income" wherever "net income" appears in division (B)(2)(c) in this section. For purposes of division (C)(2) of this section, the numerator and denominator of each of the fractions shall include the portion of any real and tangible personal property, payroll, and sales, respectively, relating to, or used in connection with the production of, net nonbusiness income allocated under section 5733.051 of the Revised Code. Nothing in this division shall allow any amount to be included in the numerator or denominator more than once.

(D)(1) If, on the last day of the taxpayer's taxable year preceding the tax year, the taxpayer is a related member to a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year, or if, on the last day of the taxpayer's taxable year preceding the tax year, a corporation that elects to be a qualifying holding company for the tax year beginning after the last day of the taxpayer's taxable year is a related member to the taxpayer, then the taxpayer's total value for the purposes of division (C) of this section shall be adjusted by the qualifying amount. Except as otherwise provided under division (D)(2) of this section, "qualifying amount" means the amount that, when added to the taxpayer's total value, and when subtracted from the net carrying value of the taxpayer's liabilities computed without regard to division (C)(2) of this section, or when subtracted from the taxpayer's total value and when added to the net carrying value of the taxpayer's liabilities computed without regard to division (D) of this section, results in the taxpayer's debt-to-equity ratio equaling the debt-to-equity ratio of the qualifying controlled group on the last day of the taxable year ending prior to the first day of the tax year computed on a consolidated basis in accordance with general accepted accounting principles. For the purposes of division (D)(1) of this section, the corporation's total value, after the adjustment required by that division, shall not exceed the net book value of the corporation's assets.

(2)(a) The amount added to the taxpayer's total value and subtracted from the net carrying value of the taxpayer's liabilities shall not exceed the amount of the net carrying value of the taxpayer's liabilities owed to the taxpayer's related members.

(b) A liability owed to the taxpayer's related members includes, but is not limited to, any amount that the corporation owes to a person that is not a related member if the corporation's related member or related members in whole or in part guarantee any portion or all of that amount, or pledge, hypothecate, mortgage, or carry out any similar transactions to secure any portion or all of

that amount.

(3) The base upon which the tax is levied under division (C) of section 5733.06 of the Revised Code shall be computed by multiplying the amount determined under divisions (C) and (D) of this section but without regard to section 5733.052 of the Revised Code.

(4) For purposes of division (D) of this section, "related member" has the same meaning as in section 5733.042 of the Revised Code.

Sec. 5733.052. (A) At the discretion of the tax commissioner, any taxpayer that owns or controls either directly or indirectly more than fifty per cent of the capital stock with voting rights of one or more other corporations, or has more than fifty per cent of its capital stock with voting rights owned or controlled either directly or indirectly by another corporation, or by related interests that own or control either directly or indirectly more than fifty per cent of the capital stock with voting rights of one or more other corporations, may be required or permitted, for purposes of computing the value of its issued and outstanding shares of stock under division (B) of section 5733.05 of the Revised Code, to combine its net income with the net income of any such other corporations.

(B) A combination of net income may also be made at the election of any two or more taxpayers each having income, other than dividend or distribution income, from sources within Ohio, provided the ownership or control requirements contained in ~~the~~ division (A) of this section are satisfied and such combination is elected in a timely report which sets forth such information as the commissioner requires. This election, once made by two or more such taxpayers, may not be changed by such taxpayers with respect to amended reports or reports for future years without the written consent of the commissioner. As used in this section, "income from sources within Ohio" means income that would be allocated or apportioned to Ohio if the taxpayer computed its franchise tax without regard to this section.

(C) No combination of net income under division (A) of this section shall be required unless the commissioner determines that, in order to properly reflect income, such a combination is necessary because of intercorporate transactions and the tax liability imposed by section 5733.06 of the Revised Code.

(D) In case of a combination of income, the net income of each taxpayer shall be measured by the combined net income of all the corporations included in the combination. For purposes of such measurement, each corporation's net income shall be determined in the same manner as if the corporation were a taxpayer under this chapter. In computing combined net income, intercorporate transactions, including dividends or distributions, between corporations included in the combination shall be eliminated. If the computation of net income on a combination of income involves the use of any of the formulas set forth in this chapter, the factors used in the formulas shall be the combined totals of the factors for each corporation included in the combination after the elimination of any intercorporate transactions. The exemptions and deductions permitted under this chapter shall be taken in the same manner as if each corporation filed a separate report.

(E) For purposes of division (B) of section 5733.05 of the Revised Code, each taxpayer's net income allocated or apportioned to this state shall be computed as follows: to compute the taxpayer's net income allocated to this state for purposes of division (B)(1) of section 5733.05 of the Revised Code, the taxpayer's net income for sources allocated under section 5733.051 of the Revised Code shall be separately determined, eliminating intercorporate transactions, and allocated to this state as

provided by section 5733.051 of the Revised Code. To compute the taxpayer's net income apportioned to this state for purposes of division (B)(2) of section 5733.05 of the Revised Code, the combined net income, other than net income from sources allocated under section 5733.051 of the Revised Code, shall be apportioned to Ohio and then prorated to the taxpayer on the basis of its proportionate part of the factors used to apportion the total of such net income to Ohio.

Sec. 5733.055. (A) As used in this section:

(1) "Ceiling amount" means the excess of the amount described in division (A)(1)(a) of this section over the amount described in division (A)(1)(b) of this section:

(a) The amount of income allocated and apportioned to this state in accordance with this chapter but without regard to and without application of the adjustments required by this section;

(b) The amount of income allocated and apportioned to this state in accordance with this chapter but without regard to and without application of the adjustments required by both this section and division (I)(13) of section 5733.04 of the Revised Code.

(2) "Income adjustment amount" means the sum of the amounts described in divisions (A)(2)(a) and (b) of this section:

(a) The related member's net interest income actually allocated and apportioned to other states that impose a tax on or measured by income, in accordance with the other states' allocation and apportionment rules;

(b) The related member's net intangible income actually allocated and apportioned to other states that impose a tax on or measured by income, in accordance with the other states' allocation and apportionment rules.

For purposes of division (A)(2) of this section, "other states" does not include those states under whose laws the taxpayer files or could have elected to file with the related member, or the related member files or could have elected to file with another related member, a combined income tax report or return, a consolidated income tax report or return, or any other report or return where such report or return is due because of the imposition of a tax measured on or by income and such report or return results in the elimination of the tax effects from transactions directly or indirectly between either the taxpayer and the related member or between the related member and another corporation if such other corporation, during a one-hundred-twenty-month period commencing three years prior to the beginning of the tax year, directly or indirectly paid, accrued, or incurred intangible expenses and costs or interest expenses and costs to an entity described in divisions (C)(1) to (5) of section 5733.042 of the Revised Code.

(3) "Intangible expenses and costs" has the same meaning as in division (A)(3) of section 5733.042 of the Revised Code.

(4) "Interest expenses and costs" has the same meaning as in division (A)(4) of section 5733.042 of the Revised Code.

(5) "Intangible income and revenue" are those amounts earned or received by a related member from a taxpayer for the taxpayer's use of intangible property. Such amounts include, but are not limited to, royalty, patent, technical, and copyright fees, licensing fees, and other similar income and revenue.

(6) "Interest income and revenue" are those amounts earned or received by a related member from a taxpayer to the extent such amounts are allowed as deductions under section 163 of the

Internal Revenue Code for purposes of determining the taxpayer's taxable income under the Internal Revenue Code.

(7) "Net intangible income" means intangible income and revenue reduced by intangible expenses and costs paid or accrued directly or indirectly to a related member described in any of divisions (C)(1) to (7) of section 5747.042 of the Revised Code.

(8) "Net interest income" means interest income and revenue reduced by interest expenses and costs paid or accrued directly or indirectly to a related member described in any of divisions (C)(1) to (7) of section ~~5747.042~~ 5733.042 of the Revised Code.

(B) Except as set forth in division (C) of this section, a deduction from the corporation's net income allocated and apportioned to this state shall be allowed in an amount equal to the income adjustment amount described in division (A)(2) of this section. However, in no case shall the deduction be greater than the ceiling amount described in division (A)(1) of this section.

(C) The deduction provided by division (B) of this section is available to the taxpayer only if the taxpayer establishes with clear and convincing evidence that the intangible expenses and costs and the interest expenses and costs paid, accrued, or incurred by the corporation to a related member did not have as a principal purpose the avoidance of any portion of the tax imposed by section 5733.06 of the Revised Code.

Sec. 5733.40. As used in sections 5733.40 and 5733.41 and Chapter 5747. of the Revised Code:

(A)(1) "Adjusted qualifying amount" means either of the following:

(a) The sum of each qualifying investor's distributive share of the income, gain, expense, or loss of a qualifying pass-through entity for the qualifying taxable year of the qualifying pass-through entity multiplied by the apportionment fraction defined in division (B) of this section, subject to section 5733.401 of the Revised Code and divisions (A)(2) to (7) of this section;

(b) The sum of each qualifying beneficiary's share of the qualifying net income and qualifying net gain distributed by a qualifying trust for the qualifying taxable year of the qualifying trust multiplied by the apportionment fraction defined in division (B) of this section, subject to section 5733.401 of the Revised Code and divisions (A)(2) to (7) of this section.

(2) The sum shall exclude any amount which, pursuant to the Constitution of the United States, the Constitution of Ohio, or any federal law is not subject to a tax on or measured by net income.

(3) For the purposes of Chapters 5733. and 5747. of the Revised Code, the profit or net income of the qualifying entity shall be increased by disallowing all amounts representing expenses, other than amounts described in division (A)(7) of this section, that the qualifying entity paid to or incurred with respect to direct or indirect transactions with one or more related members, excluding the cost of goods sold calculated in accordance with section 263A of the Internal Revenue Code and United States department of the treasury regulations issued thereunder. Nothing in division (A)(3) of this section shall be construed to limit solely to this chapter the application of section 263A of the Internal Revenue Code and United States department of the treasury regulations issued thereunder.

(4) For the purposes of Chapters 5733. and 5747. of the Revised Code, the profit or net income of the qualifying entity shall be increased by disallowing all recognized losses, other than losses from sales of inventory the cost of which is calculated in accordance with section 263A of the

Internal Revenue Code and United States department of the treasury regulations issued thereunder, with respect to all direct or indirect transactions with one or more related members. For the purposes of Chapters 5733. and 5747. of the Revised Code, losses from the sales of such inventory shall be allowed only to the extent calculated in accordance with section 482 of the Internal Revenue Code and United States department of the treasury regulations issued thereunder. Nothing in division (A)(4) of this section shall be construed to limit solely to this section the application of section 263A and section 482 of the Internal Revenue Code and United States department of the treasury regulations issued thereunder.

(5) The sum shall be increased or decreased by an amount equal to the qualifying investor's or qualifying beneficiary's distributive or proportionate share of the amount that the qualifying entity would be required to add or deduct under divisions ~~(A)(20)~~ (A)(17) and ~~(21)~~ (18) of section 5747.01 of the Revised Code if the qualifying entity were a taxpayer for the purposes of Chapter 5747. of the Revised Code.

(6) The sum shall be computed without regard to section 5733.051 or division (D) of section 5733.052 of the Revised Code.

(7) For the purposes of Chapters 5733. and 5747. of the Revised Code, guaranteed payments or compensation paid to investors by a qualifying entity that is not subject to the tax imposed by section 5733.06 of the Revised Code shall be considered a distributive share of income of the qualifying entity. Division (A)(7) of this section applies only to such payments or such compensation paid to an investor who at any time during the qualifying entity's taxable year holds at least a twenty per cent direct or indirect interest in the profits or capital of the qualifying entity. For the purposes of this division, guaranteed payments and compensation shall be considered to be paid to an investor by a qualifying entity if the qualifying entity in which the investor holds at least a twenty per cent direct or indirect interest is a client employer of a professional employer organization, as those terms are defined in section 4125.01 of the Revised Code, and the guaranteed payments or compensation are paid to the investor by that professional employer organization.

(B) "Apportionment fraction" means:

(1) With respect to a qualifying pass-through entity other than a financial institution, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying pass-through entity were a corporation subject to the tax imposed by section 5733.06 of the Revised Code;

(2) With respect to a qualifying pass-through entity that is a financial institution, the fraction calculated pursuant to division (C) of section 5733.056 of the Revised Code as if the qualifying pass-through entity were a financial institution subject to the tax imposed by section 5733.06 of the Revised Code.

(3) With respect to a qualifying trust, the fraction calculated pursuant to division (B)(2) of section 5733.05 of the Revised Code as if the qualifying trust were a corporation subject to the tax imposed by section 5733.06 of the Revised Code, except that the property, payroll, and sales fractions shall be calculated by including in the numerator and denominator of the fractions only the property, payroll, and sales, respectively, directly related to the production of income or gain from acquisition, ownership, use, maintenance, management, or disposition of tangible personal property located in this state at any time during the qualifying trust's qualifying taxable year or of real property

located in this state.

(C) "Qualifying beneficiary" means any individual that, during the qualifying taxable year of a qualifying trust, is a beneficiary of that trust, but does not include an individual who is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for the entire qualifying taxable year of the qualifying trust.

(D) "Fiscal year" means an accounting period ending on any day other than the thirty-first day of December.

(E) "Individual" means a natural person.

(F) "Month" means a calendar month.

(G) ~~"Partnership" has the same meaning as in section 5747.01 of the Revised Code~~ "Distributive share" includes the sum of the income, gain, expense, or loss of a disregarded entity or qualified subchapter S subsidiary.

(H) "Investor" means any person that, during any portion of a taxable year of a qualifying pass-through entity, is a partner, member, shareholder, or investor in that qualifying pass-through entity.

(I) Except as otherwise provided in section 5733.402 or 5747.401 of the Revised Code, "qualifying investor" means any investor except those described in divisions (I)(1) to (9) of this section.

(1) An investor satisfying one of the descriptions under section 501(a) or (c) of the Internal Revenue Code, a partnership with equity securities registered with the United States securities and exchange commission under section 12 of the "Securities Exchange Act of 1934," as amended, or an investor described in division (F) of section 3334.01, or division (A) or (C) of section 5733.09 of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity.

(2) An investor who is either an individual or an estate and is a resident taxpayer for the purposes of section 5747.01 of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity.

(3) An investor who is an individual for whom the qualifying pass-through entity makes a good faith and reasonable effort to comply fully and timely with the filing and payment requirements set forth in division (D) of section 5747.08 of the Revised Code and section 5747.09 of the Revised Code with respect to the individual's adjusted qualifying amount for the entire qualifying taxable year of the qualifying pass-through entity.

(4) An investor that is another qualifying pass-through entity having only investors described in division (I)(1), (2), (3), or (6) of this section during the three-year period beginning twelve months prior to the first day of the qualifying taxable year of the qualifying pass-through entity.

(5) An investor that is another pass-through entity having no investors other than individuals and estates during the qualifying taxable year of the qualifying pass-through entity in which it is an investor, and that makes a good faith and reasonable effort to comply fully and timely with the filing and payment requirements set forth in division (D) of section 5747.08 of the Revised Code and section 5747.09 of the Revised Code with respect to investors that are not resident taxpayers of this state for the purposes of Chapter 5747. of the Revised Code for the entire qualifying taxable year of the qualifying pass-through entity in which it is an investor.

(6) An investor that is ~~a financial institution required to calculate the tax in accordance with~~

~~division (E) of section 5733.06 of the Revised Code on the first day of January of the calendar year immediately following the last day of the financial institution's calendar or fiscal year in which ends the taxpayer's taxable year~~ treated as a C corporation for federal income tax purposes for the entire qualifying taxable year of the qualifying pass-through entity in which it is an investor.

(7) An investor other than an individual that satisfies all the following:

(a) The investor submits a written statement to the qualifying pass-through entity stating that the investor irrevocably agrees that the investor has nexus with this state under the Constitution of the United States and is subject to and liable for the tax calculated under division (A) or (B) of section 5733.06 of the Revised Code with respect to the investor's adjusted qualifying amount for the entire qualifying taxable year of the qualifying pass-through entity. The statement is subject to the penalties of perjury, shall be retained by the qualifying pass-through entity for no fewer than seven years, and shall be delivered to the tax commissioner upon request.

(b) The investor makes a good faith and reasonable effort to comply timely and fully with all the reporting and payment requirements set forth in Chapter 5733. of the Revised Code with respect to the investor's adjusted qualifying amount for the entire qualifying taxable year of the qualifying pass-through entity.

(c) Neither the investor nor the qualifying pass-through entity in which it is an investor, before, during, or after the qualifying pass-through entity's qualifying taxable year, carries out any transaction or transactions with one or more related members of the investor or the qualifying pass-through entity resulting in a reduction or deferral of tax imposed by Chapter 5733. of the Revised Code with respect to all or any portion of the investor's adjusted qualifying amount for the qualifying pass-through entity's taxable year, or that constitute a sham, lack economic reality, or are part of a series of transactions the form of which constitutes a step transaction or transactions or does not reflect the substance of those transactions.

(8) Any other investor that the tax commissioner may designate by rule. The tax commissioner may adopt rules including a rule defining "qualifying investor" or "qualifying beneficiary" and governing the imposition of the withholding tax imposed by section 5747.41 of the Revised Code with respect to an individual who is a resident taxpayer for the purposes of Chapter 5747. of the Revised Code for only a portion of the qualifying taxable year of the qualifying entity.

(9) An investor that is a trust or fund the beneficiaries of which, during the qualifying taxable year of the qualifying pass-through entity, are limited to the following:

(a) A person that is or may be the beneficiary of a trust subject to Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code.

(b) A person that is or may be the beneficiary of or the recipient of payments from a trust or fund that is a nuclear decommissioning reserve fund, a designated settlement fund, or any other trust or fund established to resolve and satisfy claims that may otherwise be asserted by the beneficiary or a member of the beneficiary's family. Sections 267(c)(4), 468A(e), and 468B(d)(2) of the Internal Revenue Code apply to the determination of whether such a person satisfies division (I)(9) of this section.

(c) A person who is or may be the beneficiary of a trust that, under its governing instrument, is not required to distribute all of its income currently. Division (I)(9)(c) of this section applies only if the trust, prior to the due date for filing the qualifying pass-through entity's return for taxes imposed

by section 5733.41 and sections 5747.41 to 5747.453 of the Revised Code, irrevocably agrees in writing that for the taxable year during or for which the trust distributes any of its income to any of its beneficiaries, the trust is a qualifying trust and will pay the estimated tax, and will withhold and pay the withheld tax, as required under sections 5747.40 to 5747.453 of the Revised Code.

For the purposes of division (I)(9) of this section, a trust or fund shall be considered to have a beneficiary other than persons described under divisions (I)(9)(a) to (c) of this section if a beneficiary would not qualify under those divisions under the doctrines of "economic reality," "sham transaction," "step doctrine," or "substance over form." A trust or fund described in division (I)(9) of this section bears the burden of establishing by a preponderance of the evidence that any transaction giving rise to the tax benefits provided under division (I)(9) of this section does not have as a principal purpose a claim of those tax benefits. Nothing in this section shall be construed to limit solely to this section the application of the doctrines referred to in this paragraph.

(J) "Qualifying net gain" means any recognized net gain with respect to the acquisition, ownership, use, maintenance, management, or disposition of tangible personal property located in this state at any time during a trust's qualifying taxable year or real property located in this state.

(K) "Qualifying net income" means any recognized income, net of related deductible expenses, other than distributions deductions with respect to the acquisition, ownership, use, maintenance, management, or disposition of tangible personal property located in this state at any time during the trust's qualifying taxable year or real property located in this state.

(L) "Qualifying entity" means a qualifying pass-through entity or a qualifying trust.

(M) "Qualifying trust" means a trust subject to subchapter J of the Internal Revenue Code that, during any portion of the trust's qualifying taxable year, has income or gain from the acquisition, management, ownership, use, or disposition of tangible personal property located in this state at any time during the trust's qualifying taxable year or real property located in this state. "Qualifying trust" does not include a person described in section 501(c) of the Internal Revenue Code or a person described in division (C) of section 5733.09 of the Revised Code.

(N) "Qualifying pass-through entity" means a pass-through entity as defined in section 5733.04 of the Revised Code, excluding: a person described in section 501(c) of the Internal Revenue Code; a partnership with equity securities registered with the United States securities and exchange commission under section 12 of the Securities Exchange Act of 1934, as amended; or a person described in division (C) of section 5733.09 of the Revised Code.

(O) "Quarter" means the first three months, the second three months, the third three months, or the last three months of a qualifying entity's qualifying taxable year.

(P) "Related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section. However, for the purposes of divisions (A)(3) and (4) of this section only, "related member" has the same meaning as in division (A)(6) of section 5733.042 of the Revised Code without regard to division (B) of that section, but shall be applied by substituting "forty per cent" for "twenty per cent" wherever "twenty per cent" appears in division (A) of that section.

(Q) "Return" or "report" means the notifications and reports required to be filed pursuant to sections 5747.42 to 5747.45 of the Revised Code for the purpose of reporting the tax imposed under section 5733.41 or 5747.41 of the Revised Code, and included declarations of estimated tax when so

required.

(R) "Qualifying taxable year" means the calendar year or the qualifying entity's fiscal year ending during the calendar year, or fractional part thereof, for which the adjusted qualifying amount is calculated pursuant to sections 5733.40 and 5733.41 or sections 5747.40 to 5747.453 of the Revised Code.

~~(S) "Distributive share" includes the sum of the income, gain, expense, or loss of a disregarded entity or qualified subchapter S subsidiary.~~

Sec. 5733.98. (A) To provide a uniform procedure for calculating the amount of tax imposed by section 5733.06 of the Revised Code that is due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order, except as otherwise provided in section 5733.058 of the Revised Code:

~~(1)~~ For tax year 2005, the credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

~~(2)~~ The credit allowed for financial institutions under section 5733.45 of the Revised Code;

~~(3)~~ The credit for qualifying affiliated groups under section 5733.068 of the Revised Code;

~~(4)~~ The subsidiary corporation credit under section 5733.067 of the Revised Code;

~~(5)~~ The credit for recycling and litter prevention donations under section 5733.064 of the Revised Code;

~~(6)~~ The credit for employers that enter into agreements with child day-care centers under section 5733.36 of the Revised Code;

~~(7)~~ The credit for employers that reimburse employee child care expenses under section 5733.38 of the Revised Code;

~~(8)~~ The credit for purchases of lights and reflectors under section 5733.44 of the Revised Code;

~~(9)~~ The nonrefundable job retention credit under division (B) of section 5733.0610 of the Revised Code;

~~(10)~~ The second credit for purchases of new manufacturing machinery and equipment under section 5733.33 of the Revised Code;

~~(11)~~ The job training credit under section 5733.42 of the Revised Code;

~~(12)~~ The credit for qualified research expenses under section 5733.351 of the Revised Code;

~~(13)~~ The enterprise zone credit under section 5709.66 of the Revised Code;

~~(14)~~ The credit for the eligible costs associated with a voluntary action under section 5733.34 of the Revised Code;

~~(15)~~ The credit for employers that establish on-site child day-care centers under section 5733.37 of the Revised Code;

~~(16) The ethanol plant investment credit under section 5733.46 of the Revised Code;~~

~~(17)~~ The credit for purchases of qualifying grape production property under section 5733.32 of the Revised Code;

~~(18)~~ The export sales credit under section 5733.069 of the Revised Code;

~~(19)~~ The enterprise zone credits under section 5709.65 of the Revised Code;

~~(20)~~ The credit for using Ohio coal under section 5733.39 of the Revised Code;

~~(21)~~ The credit for purchases of qualified low-income community investments under section

5733.58 of the Revised Code;

~~(22)~~ The credit for small telephone companies under section 5733.57 of the Revised Code;

~~(23)~~ The credit for eligible nonrecurring 9-1-1 charges under section 5733.55 of the Revised Code;

~~(24)~~ For tax year 2005, the credit for providing programs to aid the communicatively impaired under division (A) of section 5733.56 of the Revised Code;

~~(25)~~ The research and development credit under section 5733.352 of the Revised Code;

~~(26)~~ For tax years 2006 and subsequent tax years, the credit for taxes paid by a qualifying pass-through entity allowed under section 5733.0611 of the Revised Code;

~~(27)~~ The refundable credit for rehabilitating a historic building under section 5733.47 of the Revised Code;

~~(28)~~ The refundable jobs creation credit or job retention credit under division (A) of section 5733.0610 of the Revised Code;

~~(29)~~ The refundable credit for tax withheld under division (B)(2) of section 5747.062 of the Revised Code;

~~(30)~~ The refundable credit under section 5733.49 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;

~~(31)~~ For tax years 2006, 2007, and 2008, the refundable credit allowable under division (B) of section 5733.56 of the Revised Code;

~~(32)~~ The refundable motion picture and broadway theatrical production credit under section 5733.59 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a tax year shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit.

Sec. 5735.026. (A) The tax commissioner, for the purposes of administering this chapter, shall issue an exporter license to a person that receives motor fuel in this state and exports that fuel out of this state and that demonstrates to the tax commissioner's satisfaction that the person is an exporter.

(B) To obtain an exporter license, a person shall file, under oath, an application with the commissioner in such form as the commissioner prescribes. The application shall set forth the following information:

(1) The name under which the exporter will transact business within the state;

(2) The location, including street number address, of the exporter's principal office or place of business;

(3) The name and address of the owner, or the names and addresses of the partners if such exporter is a partnership, or the names and addresses of the principal officers if the exporter is a corporation or an association;

(4) A certified copy of the certificate or license issued by the ~~Secretary of State~~ secretary of state showing that the corporation is authorized to transact business in this state if the exporter is a corporation organized under the laws of another state, territory, or country;

(5) For an exporter described in division (DD)(1) of section 5735.01 of the Revised Code, a

copy of the applicant's license or certificate to collect and remit motor fuel taxes or sell or distribute motor fuel in the specified destination state or states for which the license or certificate is to be issued;

(6) Any other information the commissioner may require.

(C)(1) After a hearing as provided in division (C)(2) of this section, the commissioner may refuse to issue a license to transact business as an exporter of motor fuel in the following circumstances:

(a) The applicant has previously had a license issued under this chapter canceled for cause by the commissioner;

(b) The commissioner believes that an application is not filed in good faith;

(c) The applicant has previously violated any provision of this chapter;

(d) The application is filed as a subterfuge by the applicant for the real person in interest who has previously had a license issued under this chapter canceled for cause by the commissioner or who has violated any provision of this chapter.

(2) The commissioner shall conduct a hearing before refusing to issue a license to transact business as an exporter in any of the circumstances described in division (C)(1) of this section. The applicant shall be given five days' notice, in writing, of the hearing. The applicant may appear in person or be represented by counsel, and may present testimony at the hearing.

(D) When an application in proper form has been accepted for filing, the commissioner shall issue to such exporter a license to transact business as an exporter of motor fuel in this state, subject to cancellation of such license as provided by law.

(E) No person shall make a false or fraudulent statement on the application required by this section.

Sec. 5735.06. (A) On or before the last day of each month, each motor fuel dealer shall file with the tax commissioner a report for the preceding calendar month on a form prescribed by the commissioner for that purpose. The report shall include the following information:

(1) An itemized statement of the number of gallons of all motor fuel received during the preceding calendar month by such motor fuel dealer, which has been produced, refined, prepared, distilled, manufactured, blended, or compounded by such motor fuel dealer in the state;

(2) An itemized statement of the number of gallons of all motor fuel received by such motor fuel dealer in the state from any source during the preceding calendar month, other than motor fuel included in division (A)(1) of this section, together with a statement showing the date of receipt of such motor fuel; the name of the person from whom purchased or received; the date of receipt of each shipment of motor fuel; the point of origin and the point of destination of each shipment; the quantity of each of said purchases or shipments; the name of the carrier; the number of gallons contained in each car if shipped by rail; the point of origin, destination, and shipper if shipped by pipe line; or the name and owner of the boat, barge, or vessel if shipped by water;

(3) An itemized statement of the number of gallons of motor fuel which such motor fuel dealer has during the preceding calendar month:

(a) For motor fuel other than gasoline sold for use other than for operating motor vehicles on the public highways or on waters within the boundaries of this state;

(b) Exported from this state to any other state or foreign country as provided in division (A)

(4) of section 5735.05 of the Revised Code;

(c) Sold to the United States government or any of its agencies;

(d) Sold for delivery to motor fuel dealers;

(e) Sold exclusively for use in the operation of aircraft;

(4) Such other information incidental to the enforcement of the motor fuel laws of the state as the commissioner requires.

(B) The report shall show the tax due, computed as follows:

(1) The following deductions shall be made from the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month:

(a) The total number of gallons of motor fuel received by the motor fuel dealer within the state and sold or otherwise disposed of during the preceding calendar month as set forth in section 5735.05 of the Revised Code;

(b) The total number of gallons received during the preceding calendar month and sold or otherwise disposed of to another licensed motor fuel dealer pursuant to section 5735.05 of the Revised Code;

(c) To cover the costs of the motor fuel dealer in compiling the report, and evaporation, shrinkage, or other unaccounted-for losses:

(i) If the report is timely filed and the tax is timely paid, three per cent of the total number of gallons of motor fuel received by the motor fuel dealer within the state during the preceding calendar month less the total number of gallons deducted under divisions (B)(1)(a) and (b) of this section, less one per cent of the total number of gallons of motor fuel that were sold to a retail dealer during the preceding calendar month;

(ii) If the report required by division (A) of this section is not timely filed and the tax is not timely paid, no deduction shall be allowed;

(iii) If the report is incomplete, no deduction shall be allowed for any fuel on which the tax is not timely reported and paid;

(2) The number of gallons remaining after the deductions have been made shall be multiplied ~~separately~~ by ~~each of~~ the ~~following amounts:~~

~~(a) The~~ cents per gallon rate~~;~~

~~(b) Two cents.~~

~~The sum of the products~~ prescribed by section 5735.05 of the Revised Code. The product obtained ~~in divisions (B)(2)(a) and (b) of this section~~ shall be the amount of motor fuel tax for the preceding calendar month.

(C) The report shall be filed together with payment of the tax shown on the report to be due. The commissioner may extend the time for filing reports and may remit all or part of penalties which may become due under sections 5735.01 to 5735.99 of the Revised Code. For purposes of this section and sections 5735.062 and 5735.12 of the Revised Code, a report required to be filed under this section and payment of the tax due under this chapter are considered filed when received by the tax commissioner.

(D) The tax commissioner may require a motor fuel dealer to file a report for a period other than one month. Such a report, together with payment of the tax, shall be filed not later than thirty days after the last day of the prescribed reporting period.

(E) No person required by this section to file a tax report shall file a false or fraudulent tax report or supporting schedule.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) ~~Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry~~ Laundry and dry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service, including prepaid calling service, prepaid wireless calling service, or ancillary service, is or is to be provided, but not including coin-operated telephone service;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided;

(p) ~~On and after August 1, 2003, satellite~~ Satellite broadcasting service is or is to be provided;

(q) ~~On and after August 1, 2003, personal~~ Personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.

(r) ~~On and after August 1, 2003, the~~ The transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;

(s) ~~On and after August 1, 2003, motor~~ Motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.

(t) ~~On and after August 1, 2003, snow~~ Snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that has less than five thousand dollars in sales of such service during the calendar year.

(u) Electronic publishing service is or is to be provided to a consumer for use in business, except that such transactions occurring between members of an affiliated group, as defined in division (B)(3)(e) of this section, are not sales.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated

plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used primarily in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, or an ownership interest in a pass-through entity, as defined in section 5733.04 of the Revised Code, is transferred, if the corporation or pass-through entity is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders or owners;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale;

(9) ~~On and after August 1, 2003, all~~ All transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business;

(10) All transactions in which "guaranteed auto protection" is provided whereby a person promises to pay to the consumer the difference between the amount the consumer receives from motor vehicle insurance and the amount the consumer owes to a person holding title to or a lien on the consumer's motor vehicle in the event the consumer's motor vehicle suffers a total loss under the terms of the motor vehicle insurance policy or is stolen and not recovered, if the protection and its price are included in the purchase or lease agreement;

(11)(a) Except as provided in division (B)(11)(b) of this section, ~~on and after October 1, 2009,~~ all transactions by which health care services are paid for, reimbursed, provided, delivered, arranged for, or otherwise made available by a medicaid health insuring corporation pursuant to the corporation's contract with the state.

(b) If the centers for medicare and medicaid services of the United States department of health and human services determines that the taxation of transactions described in division (B)(11)(a) of this section constitutes an impermissible health care-related tax under the "Social Security Act," section 1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, the medicaid director shall notify the tax commissioner of that determination. Beginning with the first day of the month following that notification, the transactions described in division (B)(11)(a) of this section are not sales for the purposes of this chapter or Chapter 5741. of the Revised Code. The tax commissioner shall order that the collection of taxes under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and 5741.023 of the Revised Code shall cease for transactions occurring on or after that date.

(12) All transactions by which a specified digital product is provided for permanent use or

less than permanent use, regardless of whether continued payment is required.

Except as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

The operator of any peer-to-peer car sharing program shall be considered to be the vendor.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E) of this section.

(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled

to claim exemption under division (B)(42)(f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E) of this section.

(6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by that person and used in performing the service, except for packaging materials sold by such person in a transaction separate from the service.

(7) In the case of a transaction for health care services under division (B)(11) of this section, a medicaid health insuring corporation is the consumer of such services. The purchase of such services by a medicaid health insuring corporation is not subject to the exception for resale under division (E) of this section or to the exemptions provided under divisions (B)(12), (18), (19), and (22) of section 5739.02 of the Revised Code.

(E) "Retail sale" and "sales at retail" include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1)(a) "Price," except as provided in divisions (H)(2), (3), and (4) of this section, means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(i) The vendor's cost of the property sold;

(ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, including the tax imposed under Chapter 5751. of the Revised Code, and any other expense of the vendor;

(iii) Charges by the vendor for any services necessary to complete the sale;

(iv) ~~On and after August 1, 2003, delivery~~ Delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.

(v) Installation charges;

(vi) Credit for any trade-in.

(b) "Price" includes consideration received by the vendor from a third party, if the vendor

actually receives the consideration from a party other than the consumer, and the consideration is directly related to a price reduction or discount on the sale; the vendor has an obligation to pass the price reduction or discount through to the consumer; the amount of the consideration attributable to the sale is fixed and determinable by the vendor at the time of the sale of the item to the consumer; and one of the following criteria is met:

(i) The consumer presents a coupon, certificate, or other document to the vendor to claim a price reduction or discount where the coupon, certificate, or document is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any vendor to whom the coupon, certificate, or document is presented;

(ii) The consumer identifies the consumer's self to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group or organization.

(iii) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the consumer, or on a coupon, certificate, or other document presented by the consumer.

(c) "Price" does not include any of the following:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.

(v) The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation from a third party to cover all or part of the gift card value. For the purposes of this division, a gift card is not sold by a vendor or purchased by a consumer if it is distributed pursuant to an awards, loyalty, or promotional program. Past and present purchases of tangible personal property or services by the consumer shall not be treated as consideration exchanged for a gift card.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has

the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in this division, "watercraft" includes an outdrive unit attached to the watercraft.

(4) In the case of transactions for health care services under division (B)(11) of this section, "price" means the amount of managed care premiums received each month by a medicaid health insuring corporation.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that the dollar value of gift cards distributed pursuant to an awards, loyalty, or promotional program, and cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in ~~division (G) of~~ section ~~5739.09~~ 5739.091 of the Revised Code.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or transportation of property or personnel to or from a place where a service is performed.

(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.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county that is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to section 306.03 of the Revised Code or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority that includes territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county that is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the

sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

~~For transactions occurring on or after the effective date of the amendment of this section by H.B. 157 of the 127th general assembly, December 21, 2007, "electronic~~ "Electronic information services" does not include electronic publishing.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means;

(k) Providing digital advertising services.

The services listed in divisions (Y)(2)(a) to (k) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA)(1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

(h) Ancillary service;

(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.

(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:

(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(c) "Directory assistance" means an ancillary service of providing telephone number or address information.

(d) "Vertical service" means an ancillary service that is offered in connection with one or

more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service.

(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900 service" and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer.

(4) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(5) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile telecommunications service as well as other non-telecommunications services, including the download of digital products delivered electronically, and content and ancillary services, that must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(6) "Value-added non-voice data service" means a telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(7) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(8) "Customer" has the same meaning as in section 5739.034 of the Revised Code.

(BB) "Laundry and dry cleaning services" means removing soil or dirt from towels, linens, articles of clothing, or other fabric items that belong to others and supplying towels, linens, articles of clothing, or other fabric items. "Laundry and dry cleaning services" does not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or

maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and also means conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the calendar year. As used in this division, "cleaning" does not include sanitation services necessary for an establishment described in 21 U.S.C. 608 to comply with rules and regulations adopted pursuant to that section.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so provided or supplied receive their wages, salary, or other compensation from the provider or supplier of the employment service or from a third party that provided or supplied the personnel to the provider or supplier. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not

under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food, food production, or other agricultural purposes, including, but not limited to, cattle, sheep, goats, swine, poultry, and captive deer. "Livestock" does not include invertebrates, amphibians, reptiles, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.

(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in section 927.51 of the Revised Code.

(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.

(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly

published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.

(TT)(1) "Feminine hygiene products" means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include grooming and hygiene products.

(2) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether any of these products are over-the-counter drugs.

(3) "Over-the-counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, which label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

(UU)(1) "Lease" or "rental" means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. "Lease" or "rental" includes future options to purchase or extend, and agreements described in 26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property. "Lease" or "rental" does not include:

(a) A transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments;

(b) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one per cent of the total required payments;

(c) Providing tangible personal property along with an operator for a fixed or indefinite period of time, if the operator is necessary for the property to perform as designed. For purposes of this division, the operator must do more than maintain, inspect, or set up the tangible personal property.

(2) "Lease" and "rental," as defined in division (UU) of this section, shall not apply to leases or rentals that exist before June 26, 2003.

(3) "Lease" and "rental" have the same meaning as in division (UU)(1) of this section regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws.

(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.

(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code.

(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service.

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

(ZZ) "Municipal gas utility" means a municipal corporation that owns or operates a system for the distribution of natural gas.

(AAA) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(BBB) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(CCC) "Delivered electronically" means delivery of computer software from the seller to the purchaser by means other than tangible storage media.

(DDD) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(EEE)(1) "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.

(2) As used in division (EEE)(1) of this section:

(a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume.

(b) "Dietary supplements" means any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food

for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by 21 C.F.R. 101.36; and that contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(2)(b)(i) to (v) of this section.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.

(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.

(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.

(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body. "Durable medical equipment" does not include mobility enhancing equipment.

(III) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, that is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle, that is not generally used by persons with normal mobility, and that does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. "Mobility enhancing equipment" does not include durable medical equipment.

(JJJ) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the human body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. As used in this division, before July 1, 2019, "prosthetic device" does not include corrective eyeglasses, contact lenses, or dental prosthesis. On or after July 1, 2019, "prosthetic device" does not include dental prosthesis but does include corrective eyeglasses or

contact lenses.

(KKK)(1) "Fractional aircraft ownership program" means a program in which persons within an affiliated group sell and manage fractional ownership program aircraft, provided that at least one hundred airworthy aircraft are operated in the program and the program meets all of the following criteria:

(a) Management services are provided by at least one program manager within an affiliated group on behalf of the fractional owners.

(b) Each program aircraft is owned or possessed by at least one fractional owner.

(c) Each fractional owner owns or possesses at least a one-sixteenth interest in at least one fixed-wing program aircraft.

(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners.

(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program.

(2) As used in division (KKK)(1) of this section:

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section.

(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (KKK)(1)(e) of this section.

(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.

(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (KKK)(1)(e) of this section, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; the satisfaction of record-keeping requirements; and the development and use of an operations manual and a maintenance manual for the fractional aircraft ownership program.

(e) "Program manager" means the person that offers management services to fractional owners pursuant to a management services agreement under division (KKK)(1)(e) of this section.

(LLL) "Electronic publishing" means providing access to one or more of the following primarily for business customers, including the federal government or a state government or a political subdivision thereof, to conduct research: news; business, financial, legal, consumer, or credit materials; editorials, columns, reader commentary, or features; photos or images; archival or research material; legal notices, identity verification, or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other similar information which has been gathered and made available by the provider to the consumer in an electronic format. Providing

electronic publishing includes the functions necessary for the acquisition, formatting, editing, storage, and dissemination of data or information that is the subject of a sale.

(MMM) "Medicaid health insuring corporation" means a health insuring corporation that holds a certificate of authority under Chapter 1751. of the Revised Code and is under contract with the department of medicaid pursuant to section 5167.10 of the Revised Code.

(NNN) "Managed care premium" means any premium, capitation, or other payment a medicaid health insuring corporation receives for providing or arranging for the provision of health care services to its members or enrollees residing in this state.

(OOO) "Captive deer" means deer and other cervidae that have been legally acquired, or their offspring, that are privately owned for agricultural or farming purposes.

(PPP) "Gift card" means a document, card, certificate, or other record, whether tangible or intangible, that may be redeemed by a consumer for a dollar value when making a purchase of tangible personal property or services.

(QQQ) "Specified digital product" means an electronically transferred digital audiovisual work, digital audio work, or digital book.

As used in division (QQQ) of this section:

(1) "Digital audiovisual work" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(2) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds, including digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(3) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.

(4) "Electronically transferred" means obtained by the purchaser by means other than tangible storage media.

(RRR) "Digital advertising services" means providing access, by means of telecommunications equipment, to computer equipment that is used to enter, upload, download, review, manipulate, store, add, or delete data for the purpose of electronically displaying, delivering, placing, or transferring promotional advertisements to potential customers about products or services or about industry or business brands.

(SSS) "Peer-to-peer car sharing program" has the same meaning as in section 4516.01 of the Revised Code.

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.

(7) "Food" has the same meaning as in section 3717.01 of the Revised Code.

(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 food 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.

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.

(A)(1) The tax shall be collected as provided in section 5739.025 of the Revised Code. The rate of the tax shall be five and three-fourths per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

(2) In the case of the lease or rental, with a fixed term of more than thirty days or an indefinite term with a minimum period of more than thirty days, of any motor vehicles designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee or renter primarily for business purposes, the tax shall be collected by the vendor at the time the lease or rental is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee or renter under the lease agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee or renter. In the case of an open-end lease or rental, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due. As used in this division, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(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;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6)(a) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(b) Sales of motor fuel other than that described in division (B)(6)(a) of this section and used for powering a refrigeration unit on a vehicle other than one used primarily to provide comfort to the operator or occupants of the vehicle.

(7) Sales of natural gas by a natural gas company or municipal gas utility, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in section 5727.01 of the Revised Code, and sales of electricity delivered through wires;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;

(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.

(c) Divisions (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution or laws of the United States or the Constitution of this state;

(11) Except for transactions that are sales under division (B)(3)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(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.

(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;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(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.

(16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or

floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(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;

(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.

(25)(a) Sales of water to a consumer for residential use;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of

the Revised Code;

(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.

(28) Sales of animals by nonprofit animal adoption services or county humane societies;

(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

(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;

(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;

(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) or (n) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.

(35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(35)(a) of this section;

(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(38) Sales of tangible personal property that is not required to be registered or licensed under the laws of this state to a citizen of a foreign nation that is not a citizen of the United States, provided the property is delivered to a person in this state that is not a related member of the purchaser, is physically present in this state for the sole purpose of temporary storage and package consolidation, and is subsequently delivered to the purchaser at a delivery address in a foreign nation. As used in division (B)(38) of this section, "related member" has the same meaning as in section 5733.042 of the Revised Code, and "temporary storage" means the storage of tangible personal property for a period of not more than sixty days.

(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(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.

(41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.

(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, 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. 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.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) 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;

(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;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(35) of this section.

(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;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(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.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(p) To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced;

(q) To use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production.

As used in division (B)(42)(q) of this section, "production" means operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth.

(i) For the purposes of division (B)(42)(q) of this section, the "thing transferred" includes, but is not limited to, any of the following:

(I) Services provided in the construction of permanent access roads, services provided in the construction of the well site, and services provided in the construction of temporary impoundments;

(II) Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs;

(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;

(IV) Casing, tubulars, and float and centralizing equipment;

(V) Trailers to which production equipment is attached;

(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;

(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;

(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;

(IX) Pressure pumping equipment;

(X) Artificial lift systems equipment;

(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;

(XII) Tangible personal property directly used to control production equipment.

(ii) For the purposes of division (B)(42)(q) of this section, the "thing transferred" does not

include any of the following:

(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;

(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;

(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;

(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;

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

(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;

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

(VIII) Communication devices or services;

(IX) Office supplies;

(X) Trailers used as offices or lodging;

(XI) Motor vehicles of any kind;

(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;

(XIII) Tangible personal property used primarily as a safety device;

(XIV) Data collection or monitoring devices;

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

The enumeration of tangible personal property in division (B)(42)(q)(ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B)(42)(q) of this section.

The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B)(42)(q) of this section.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where

telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services~~, as defined in division (FF) of section 5739.01 of the Revised Code~~.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(48)~~(a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;~~

~~(b) As used in division (B)(48)(a) of this section:~~

~~(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.~~

~~(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.~~

~~(c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date~~ Sales of feminine hygiene products.

(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.

(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

(51) Any transfer or lease of tangible personal property between the state and JobsOhio in

accordance with section 4313.02 of the Revised Code.

(52)(a) Sales to a qualifying corporation.

(b) As used in division (B)(52) of this section:

(i) "Qualifying corporation" means a nonprofit corporation organized in this state that leases from an eligible county land, buildings, structures, fixtures, and improvements to the land that are part of or used in a public recreational facility used by a major league professional athletic team or a class A to class AAA minor league affiliate of a major league professional athletic team for a significant portion of the team's home schedule, provided the following apply:

(I) The facility is leased from the eligible county pursuant to a lease that requires substantially all of the revenue from the operation of the business or activity conducted by the nonprofit corporation at the facility in excess of operating costs, capital expenditures, and reserves to be paid to the eligible county at least once per calendar year.

(II) Upon dissolution and liquidation of the nonprofit corporation, all of its net assets are distributable to the board of commissioners of the eligible county from which the corporation leases the facility.

(ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code.

(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work. As used in division (B)(53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video programming" have the same meanings as in section 1332.21 of the Revised Code.

(54) Sales of a digital audio work electronically transferred for delivery through use of a machine, such as a juke box, that does all of the following:

(a) Accepts direct payments to operate;

(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B)(54)(a) of this section;

(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.

(55)(a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:

(i) An item of clothing, the price of which is seventy-five dollars or less;

(ii) An item of school supplies, the price of which is twenty dollars or less;

(iii) An item of school instructional material, the price of which is twenty dollars or less.

(b) As used in division (B)(55) of this section:

(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and

shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

(ii) "School supplies" means items commonly used by a student in a course of study. "School supplies" includes only the following items: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders, expandable, pocket, plastic, and manila; glue, paste, and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets. "School supplies" does not include any item purchased for use in a trade or business.

(iii) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. "School instructional material" includes only the following items: reference books, reference maps and globes, textbooks, and workbooks. "School instructional material" does not include any material purchased for use in a trade or business.

(56)(a) Sales of diapers or incontinence underpads sold pursuant to a prescription, for the benefit of a medicaid recipient with a diagnosis of incontinence, and by a medicaid provider that maintains a valid provider agreement under section 5164.30 of the Revised Code with the department of medicaid, provided that the medicaid program covers diapers or incontinence underpads as an incontinence garment.

(b) As used in division (B)(56)(a) of this section:

(i) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

(ii) "Incontinence underpad" means an absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence.

~~(57) Sales of feminine hygiene products.~~

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

(D) ~~The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.~~

~~(E)~~ The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an

additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.

Sec. 5739.021. (A) For the purpose of providing additional general revenues for the county, supporting criminal and administrative justice services in the county, funding a regional transportation improvement project under section 5595.06 of the Revised Code, or any combination of the foregoing, and to pay the expenses of administering such levy, any county may levy a tax at the rate of not more than one per cent upon every retail sale made in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase the rate of an existing tax to not more than one per cent. The rate of any tax levied pursuant to this section shall be a multiple of one-twentieth of one per cent. The rate levied under this section in any county other than a county that adopted a charter under Article X, Section 3, Ohio Constitution, may exceed one per cent, but may not exceed one and one-half per cent minus the amount by which the rate levied under section 5739.023 of the Revised Code by the county transit authority exceeds one per cent.

The tax shall be levied and the rate increased pursuant to a resolution of the board of county commissioners. The resolution shall state the purpose for which the tax is to be levied and the number of years for which the tax is to be levied, or that it is for a continuing period of time. If the tax is to be levied for the purpose of providing additional general revenues and for the purpose of supporting criminal and administrative justice services, the resolution shall state the rate or amount of the tax to be apportioned to each such purpose. The rate or amount may be different for each year the tax is to be levied, but the rates or amounts actually apportioned each year shall not be different from that stated in the resolution for that year. Any amount by which the rate of the tax exceeds one per cent shall be apportioned exclusively for the construction, acquisition, equipping, or repair of a detention facility in the county.

If the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, it must receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for such necessity. The board shall deliver a certified copy of the resolution to the tax commissioner, not later than the sixty-fifth day prior to the date on which the tax is to become effective, which shall be the first day of the calendar quarter. A resolution proposing to levy a tax at a rate that would cause the rate levied under this section to exceed one per cent may not be adopted as an emergency measure.

Prior to the adoption of any resolution under this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county, or as provided in section 7.16 of the Revised Code, once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

Except as provided in division (B)(1) or (3) of this section, the resolution shall be subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code.

If a petition for a referendum is filed, the county auditor with whom the petition was filed shall, within five days, notify the board of county commissioners and the tax commissioner of the filing of the petition by certified mail. If the board of elections with which the petition was filed declares the petition invalid, the board of elections, within five days, shall notify the board of county commissioners and the tax commissioner of that declaration by certified mail. If the petition is declared to be invalid, the effective date of the tax or increased rate of tax levied by this section shall be the first day of a calendar quarter following the expiration of sixty-five days from the date the commissioner receives notice from the board of elections that the petition is invalid.

(B)(1) A resolution that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than ninety days after a certified copy of such resolution is transmitted to the board of elections and the election is not held in ~~February or~~ August of any year. A resolution proposing to levy a tax at a rate that would cause the rate levied under this section to exceed one per cent may not go into effect unless the question is submitted to electors under this division. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under this division shall go into effect unless approved by a majority of those voting upon it, and, except as provided in division (B)(3) of this section, shall become effective on the first day of a calendar quarter following the expiration of sixty-five days from the date the tax commissioner receives notice from the board of elections of the affirmative vote.

(2) A resolution that is adopted as an emergency measure shall go into effect as provided in division (A) of this section, but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than ninety days after a certified copy of the resolution is transmitted to the board of elections. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 of the Revised Code. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of a calendar quarter following the expiration of sixty-five days after the date the board and tax commissioner receive notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(3) If a vendor makes a sale in this state by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, any tax levied or repealed or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner

pursuant to division (H) of this section.

(C) If a resolution is rejected at a referendum or if a resolution adopted after January 1, 1982, as an emergency measure is repealed by the electors pursuant to division (B)(2) of this section or section 5739.022 of the Revised Code, then for one year after the date of the election at which the resolution was rejected or repealed the board of county commissioners may not adopt any resolution authorized by this section as an emergency measure.

(D) The board of county commissioners, at any time while a tax levied under this section is in effect, may by resolution reduce the rate at which the tax is levied to a lower rate authorized by this section. Any reduction in the rate at which the tax is levied shall be made effective on the first day of a calendar quarter next following the sixty-fifth day after a certified copy of the resolution is delivered to the tax commissioner.

(E) The tax on every retail sale subject to a tax levied pursuant to this section shall be in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.023 or 5739.026 of the Revised Code.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to section 5741.021 of the Revised Code.

The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code. If the additional tax or some portion thereof is levied for the purpose of criminal and administrative justice services or specifically for the purpose of constructing, acquiring, equipping, or repairing a detention facility, the revenue from the tax, or the amount or rate apportioned to that purpose, shall be credited to one or more special funds created in the county treasury for receipt of that revenue.

Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a county under the Constitution of the United States or the Ohio Constitution.

(F) For purposes of this section, a copy of a resolution is "certified" when it contains a written statement attesting that the copy is a true and exact reproduction of the original resolution.

(G) If a board of commissioners intends to adopt a resolution to levy a tax in whole or in part for the purpose of criminal and administrative justice services, the board shall prepare and make available at the first public hearing at which the resolution is considered a statement containing the following information:

(1) For each of the two preceding fiscal years, the amount of expenditures made by the county from the county general fund for the purpose of criminal and administrative justice services;

(2) For the fiscal year in which the resolution is adopted, the board's estimate of the amount of expenditures to be made by the county from the county general fund for the purpose of criminal and administrative justice services;

(3) For each of the two fiscal years after the fiscal year in which the resolution is adopted, the board's preliminary plan for expenditures to be made from the county general fund for the purpose of criminal and administrative justice services, both under the assumption that the tax will be imposed for that purpose and under the assumption that the tax would not be imposed for that purpose, and for expenditures to be made from the special fund created under division (E) of this section under the assumption that the tax will be imposed for that purpose.

The board shall prepare the statement and the preliminary plan using the best information available to the board at the time the statement is prepared. Neither the statement nor the preliminary plan shall be used as a basis to challenge the validity of the tax in any court of competent jurisdiction, nor shall the statement or preliminary plan limit the authority of the board to appropriate, pursuant to section 5705.38 of the Revised Code, an amount different from that specified in the preliminary plan.

(H) Upon receipt from a board of county commissioners of a certified copy of a resolution required by division (A) or (D) of this section, or from the board of elections of a notice of the results of an election required by division (A) or (B)(1) or (2) of this section, the tax commissioner shall provide notice of a tax rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.

(I) As used in this section:

(1) "Criminal and administrative justice services" means the exercise by the county sheriff of all powers and duties vested in that office by law; the exercise by the county prosecuting attorney of all powers and duties vested in that office by law; the exercise by any court in the county of all powers and duties vested in that court; the exercise by the clerk of the court of common pleas, any clerk of a municipal court having jurisdiction throughout the county, or the clerk of any county court of all powers and duties vested in the clerk by law except, in the case of the clerk of the court of common pleas, the titling of motor vehicles or watercraft pursuant to Chapter 1548. or 4505. of the Revised Code; the exercise by the county coroner of all powers and duties vested in that office by law; making payments to any other public agency or a private, nonprofit agency, the purposes of which in the county include the diversion, adjudication, detention, or rehabilitation of criminals or juvenile offenders; the operation and maintenance of any detention facility; and the construction, acquisition, equipping, or repair of such a detention facility.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Construction, acquisition, equipping, or repair" of a detention facility includes the payment of any debt charges incurred in the issuance of securities pursuant to Chapter 133. of the Revised Code for the purpose of constructing, acquiring, equipping, or repairing such a facility.

Sec. 5739.028. As used in this section "sports facility" and "constructing" have the same meanings as in division (A)(8) of section 5739.026 of the Revised Code.

This section applies only to taxes levied pursuant to sections 5739.023 and 5741.022 of the Revised Code by a regional transit authority created under section 306.31 of the Revised Code for a continuing period of time and at an aggregate rate, on ~~the effective date of this section~~ July 19, 1995, greater than one-half of one per cent on every retail sale made in the territory of the transit authority.

The board of county commissioners of the most populous county in the territory of a regional transit authority levying a tax to which this section applies may adopt a resolution not later than one hundred eighty days after ~~the effective date of this section~~ July 19, 1995, proposing to reduce the rate of such a tax and to increase by the same extent the rate of tax levied under sections 5739.026 and 5741.023 of the Revised Code for the purpose of constructing or renovating a sports facility. The total reduction in the rate of taxes levied by a transit authority and the increase in the rate of tax levied for the purpose of constructing or renovating a sports facility shall not exceed one-tenth of one per cent upon retail sales made in the territory of the transit authority; provided, the amount of taxes

received by the county for the purpose of constructing or renovating a sports facility under this section shall not exceed four million five hundred thousand dollars in any calendar year. Any amounts received by a county in a calendar year in excess of four million five hundred thousand dollars pursuant to this section shall be paid to the transit authority by the county within forty-five days following receipt by the county.

The resolution shall specify that the rate of tax levied by the transit authority will be reduced and that a tax will be levied at the same rate for the purpose of constructing or renovating a sports facility; the rate by which the tax levied by the transit authority will be reduced and by which the tax levied for the purpose of constructing or renovating a sports facility will be increased; the date the rates levied for those purposes will be reduced and increased, respectively; and the number of years the rate levied by a transit authority will be reduced and the rate levied for constructing or renovating a sports facility will be increased. The date the rate levied by the transit authority will be reduced and the rate levied for the purpose of constructing or renovating a sports facility will be increased shall not be earlier than the first day of the month that begins at least sixty days after the day the election on the question is conducted unless the board of county commissioners levies a tax under one or more of sections 307.697, 4301.421, 5743.024, and 5743.323 of the Revised Code on ~~the effective date of this section~~ July 19, 1995, in which case the date the rate levied by the transit authority will be reduced and the rate levied for the purpose of constructing or renovating a sports facility will be increased shall not be earlier than the first day following the latest day on which any of the taxes levied under one of those sections on ~~the effective date of this amendment~~ July 19, 1995, may be levied as prescribed by the resolution levying that tax. The number of years the rate of the existing tax may be reduced and the rate of tax may be levied for constructing or renovating a sports facility may be any number of years as specified in the resolution, or for a continuing period of time if so specified in the resolution.

Before a resolution adopted under this section may take effect, the board of county commissioners shall submit the resolution to the approval of the electors of the county, and the resolution shall be approved by a majority of voters voting on the question. Upon adoption of the resolution, the board of county commissioners shall certify a copy of the resolution to the board of elections of the county and to the tax commissioner, and the board of elections shall submit the question at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than seventy-five days after the resolution is certified to the board of elections and the election is not held in ~~February or~~ August of any year. The board of county commissioners shall certify the copy of the resolution to the board of elections in the manner prescribed under section 3505.071 of the Revised Code. The board of elections shall certify the results of the election to the board of county commissioners and to the tax commissioner. If the question is approved by a majority of electors voting on the question, the rate of tax imposed under sections 5739.023 and 5741.022 of the Revised Code shall be reduced, and the rate of tax levied for constructing or renovating a sports facility under sections 5739.026 and 5741.023 of the Revised Code shall be increased by the same amount, on the date specified in the resolution.

If revenue from a tax levied under sections 5739.023 and 5741.022 of the Revised Code and subject to reduction under this section is pledged to the payment of bonds, notes, or notes in anticipation of bonds, the board of county commissioners adopting a resolution under this section

shall provide sufficient revenue from the tax for the repayment of debt charges on those bonds or notes, unless an adequate substitute for payment of those charges is provided by the transit authority.

Sec. 5739.03. (A) Except as provided in section 5739.05 or section 5739.051 of the Revised Code, the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale, in the manner and at the times provided as follows:

(1) If the price is, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer or the consumer's agent to the vendor or the vendor's agent, the vendor or the vendor's agent shall collect the tax with and at the same time as the price;

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B)(1)(a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11), (28), (48), or (55)~~, or (57)~~ of section 5739.02 of the Revised Code, or if the consumer claims the transaction is not a taxable sale due to one or more of the exclusions provided under divisions (JJ)(1) to (5) of section 5739.01 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:

(i) A vendor that fraudulently fails to collect tax;

(ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;

(iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;

(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.

(2) The vendor shall maintain records, including exemption certificates, of all sales on which

a consumer has claimed an exemption, and provide them to the tax commissioner on request.

(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section.

(4) If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(6) If a transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax commissioner prescribes.

(C) As used in this division, "contractee" means a person who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property.

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt requested. Upon receipt of such request and prior to entering into the contract or agreement, the contractee shall provide to the contractor or vendor a certification sufficiently detailed to enable the contractor or vendor to ascertain the resulting classification of all materials purchased or fabricated by the contractor or vendor and transferred to the contractee. This requirement applies to a contractee regardless of whether the contractee holds a direct payment permit under section 5739.031 of the Revised Code or provides to the contractor or vendor an exemption certificate as provided under this section.

For the purposes of the taxes levied by this chapter and Chapter 5741. of the Revised Code, the contractor or vendor may in good faith rely on the contractee's certification. Notwithstanding division (B) of section 5739.01 of the Revised Code, if the tax commissioner determines that certain property certified by the contractee as tangible personal property pursuant to this division is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the contractor or vendor shall be excused from any liability on those materials.

If a contractee fails to provide such certification upon the request of the contractor or vendor,

the contractor or vendor shall comply with the provisions of this chapter and Chapter 5741. of the Revised Code without the certification. If the tax commissioner determines that such compliance has been performed in good faith and that certain property treated as tangible personal property by the contractor or vendor is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the construction contractor or vendor shall be excused from any liability on those materials.

This division does not apply to any contract or agreement where the tax commissioner determines as a fact that a certification under this division was made solely on the decision or advice of the contractor or vendor.

(D) Notwithstanding division (B) of section 5739.01 of the Revised Code, whenever the total rate of tax imposed under this chapter is increased after the date after a construction contract is entered into, the contractee shall reimburse the construction contractor for any additional tax paid on tangible property consumed or services received pursuant to the contract.

(E) A vendor who files a petition for reassessment contesting the assessment of tax on sales for which the vendor obtained no valid exemption certificates and for which the vendor failed to establish that the sales were properly not subject to the tax during the one-hundred-twenty-day period allowed under division (B) of this section, may present to the tax commissioner additional evidence to prove that the sales were properly subject to a claim of exception or exemption. The vendor shall file such evidence within ninety days of the receipt by the vendor of the notice of assessment, except that, upon application and for reasonable cause, the period for submitting such evidence shall be extended thirty days.

The commissioner shall consider such additional evidence in reaching the final determination on the assessment and petition for reassessment.

(F) Whenever a vendor refunds the price, minus any separately stated delivery charge, of an item of tangible personal property on which the tax imposed under this chapter has been paid, the vendor shall also refund the amount of tax paid, minus the amount of tax attributable to the delivery charge.

Sec. 5739.034. (A) As used in this section:

(1) "Air-to-ground radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(3) "Customer" means the person or entity that contracts with a seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or of mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(4) "End user" means the person who utilizes the telecommunications service. In the case of a person other than an individual, "end user" means the individual who utilizes the service on behalf of the person.

(5) "Home service provider" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C. 124(5), as amended.

(6) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(7) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. "Post-paid calling service" includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service, but for the fact that it is not exclusively a telecommunications service.

(8) ~~"Prepaid calling service" and "prepaid wireless calling service" have the same meanings as in section 5739.01 of the Revised Code.~~

~~(9)~~ "Service address" means:

(a) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(b) If the location in division (A)~~(9)~~(8)(a) of this section is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) If the locations in divisions (A)~~(9)~~(8)(a) and (b) of this section are not known, "service address" means the location of the customer's place of primary use.

~~(10)~~ (9) "Private communication service" means a telecommunications service that entitles a customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(B) The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code on sales of telecommunications service, information service, or mobile telecommunications service, is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section.

(C) Except for the telecommunications services described in division (E) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or each level of taxing jurisdiction where the call either originates or terminates and in which the service address also is located.

(D) Except for the telecommunications services described in division (E) of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis shall be sourced to the customer's place of primary use.

(E) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction, as follows:

(1) A sale of mobile telecommunications service, other than air-to-ground radiotelephone service and prepaid calling service, shall be sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by the service provider's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service or prepaid wireless calling service shall be sourced under division (C) of section 5739.033 of the Revised Code. But in the case of prepaid wireless calling service, in lieu of sourcing the sale of the service under division (C)(5) of section 5739.033 of the Revised Code, the service provider may elect to source the sale to the location associated with the mobile telephone number.

(4) A sale of a private communication service shall be sourced as follows:

(a) Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located;

(b) Service where all customer channel termination points are located entirely within one jurisdiction or level of jurisdiction shall be sourced in the jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced fifty per cent in each level of jurisdiction in which the customer channel termination points are located;

(d) Service for segments of a channel located in more than one jurisdiction or level of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

Sec. 5739.08. ~~The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to section 5739.02 and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:~~

(A) A municipal corporation or township ~~from levying~~ may levy an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by section 5739.02 of the Revised Code. If a municipal corporation or township repeals a tax imposed under division (A) of this section, and a county in which the municipal corporation or township has territory has a tax imposed under division ~~(C)~~ (M) of section 5739.09 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (A) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

~~(B) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.09 of the Revised Code. Such tax is in addition to any tax imposed under division (A) of this section.~~

~~(C) A county from levying an excise tax pursuant to division (A) of section 5739.09 of the Revised Code;~~

~~(D) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.09 of the Revised Code. Such a tax is in addition to any tax imposed under division (C) of this section.~~

~~(E) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in divisions (B) and (C) of section 351.021 of the Revised Code;~~

~~(F) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of section 5739.09 of the Revised Code. Such tax is in addition to any tax imposed under division (C) or (D) of this section.~~

~~(G) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.09 of the Revised Code. Such a tax is in addition to any tax imposed under division (C), (D), or (F) of this section~~ The legislative authority of a municipal corporation or the board of trustees of a township that is not wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to division (A) of section 5739.09 of the Revised Code may, by ordinance or resolution, levy an additional excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The legislative authority of the municipal corporation or the board of trustees of the township shall deposit at least fifty per cent of the revenue from the tax levied pursuant to this division into a separate fund, which shall be spent solely to make contributions to convention and visitors' bureaus operating within the county in which the municipal corporation or township is wholly or partly located, and the balance of that revenue shall be deposited in the general fund. The municipal corporation or township shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. The levy of a tax under this division is in addition to any tax imposed on the same transaction by a municipal corporation or a township under division (A) of this section.

(C)(1) As used in division (C) of this section, "cost" has the same meaning as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.

(2) The legislative authority of the most populous municipal corporation located wholly or partly in a county in which the board of county commissioners has levied a tax under division (D) of section 5739.09 of the Revised Code may amend, on or before September 30, 2002, that municipal corporation's ordinance or resolution that levies an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests, to provide for all of the following:

(a) That the rate of the tax shall be increased by not more than an additional one per cent on

each transaction;

(b) That all of the revenue from the increase in rate shall be pledged and contributed to a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code on or before May 15, 2002, and be used to pay costs of constructing, expanding, maintaining, operating, or promoting a convention center in the county, including paying bonds, or notes issued in anticipation of bonds, as provided by that chapter;

(c) That the increase in rate shall not be subject to diminution by initiative or referendum or by law while any bonds, or notes in anticipation of bonds, issued by the authority under Chapter 351. of the Revised Code to which the revenue is pledged, remain outstanding in accordance with their terms, unless provision is made by law, by the board of county commissioners, or by the legislative authority, for an adequate substitute therefor that is satisfactory to the trustee if a trust agreement secures the bonds.

(3) The legislative authority of a municipal corporation that, pursuant to division (C)(2) of this section, has amended its ordinance or resolution to increase the rate of the tax authorized by division (B) of this section may further amend the ordinance or resolution to provide that the revenue referred to in division (C)(2)(b) of this section shall be pledged and contributed both to a convention facilities authority to pay the costs of constructing, expanding, maintaining, or operating one or more convention centers in the county, including paying bonds, or notes issued in anticipation of bonds, as provided in Chapter 351. of the Revised Code, and to a convention and visitors' bureau to pay the costs of promoting one or more convention centers in the county.

(D) As used in division (D) of this section, "eligible municipal corporation" means a municipal corporation that, on September 29, 2017, levied a tax under division (B) of this section at a rate of three per cent and that is located in a county that, on that date, levied a tax under division (A) of section 5739.09 of the Revised Code at a rate of three per cent and that has, according to the most recent federal decennial census, a population exceeding three hundred thousand but not greater than three hundred fifty thousand.

The legislative authority of an eligible municipal corporation may amend, on or before December 31, 2017, that municipal corporation's ordinance or resolution that levies an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests, to provide for the following:

(1) That the rate of the tax shall be increased by not more than an additional three per cent on each transaction;

(2) That all of the revenue from the increase in rate shall be used by the municipal corporation for economic development and tourism-related purposes.

Sec. 5739.09. (A)(1) A board of county commissioners may, by resolution adopted by a majority of the members of the board, levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The board shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. Except as otherwise provided in ~~divisions (A)(2), (3), (4), (5),~~

~~(6), (7), (8), (9), (10), (11), and (12) of~~ this section, the regulations shall provide, after deducting the real and actual costs of administering the tax, for the return to each municipal corporation or township that does not levy an excise tax on the transactions, a uniform percentage of the tax collected in the municipal corporation or in the unincorporated portion of the township from each transaction, not to exceed thirty-three and one-third per cent. ~~The~~ Except as provided in this section, the remainder of the revenue arising from the tax shall be deposited in a separate fund and shall be spent solely to make contributions to the convention and visitors' bureau operating within the county, including a pledge and contribution of any portion of the remainder pursuant to an agreement authorized by section 307.678 or 307.695 of the Revised Code~~, provided that if~~ .

(2) If the board of county commissioners of an eligible county as defined in section 307.678 or 307.695 of the Revised Code adopts a resolution amending a resolution levying a tax under ~~this~~ division (A) of this section to provide that revenue from the tax shall be used by the board as described in either division (D) of section 307.678 or division (H) of section 307.695 of the Revised Code, the remainder of the revenue shall be used as described in the resolution making that amendment. ~~Except~~

(3) Except as provided in division ~~(A)(2), (3), (4), (5), (6), (7), (8), (9), (10), or (11)~~ (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), or ~~(H)~~ (Q) of this section, on and after May 10, 1994, a board of county commissioners may not levy an excise tax pursuant to ~~this~~ division (A) of this section in any municipal corporation or township located wholly or partly within the county that has in effect an ordinance or resolution levying an excise tax pursuant to division (B) of ~~this~~ section 5739.08 of the Revised Code. ~~The~~

(4) The board of a county that has levied a tax under division ~~(C)~~ (M) of this section may, by resolution adopted within ninety days after July 15, 1985, by a majority of the members of the board, amend the resolution levying a tax under ~~this~~ division (A) of this section to provide for a portion of that tax to be pledged and contributed in accordance with an agreement entered into under section 307.695 of the Revised Code. A tax, any revenue from which is pledged pursuant to such an agreement, shall remain in effect at the rate at which it is imposed for the duration of the period for which the revenue from the tax has been so pledged.

(5) The board of county commissioners of an eligible county as defined in section 307.695 of the Revised Code may, by resolution adopted by a majority of the members of the board, amend a resolution levying a tax under ~~this~~ division (A) of this section to provide that the revenue from the tax shall be used by the board as described in division (H) of section 307.695 of the Revised Code, in which case the tax shall remain in effect at the rate at which it was imposed for the duration of any agreement entered into by the board under section 307.695 of the Revised Code, the duration during which any securities issued by the board under that section are outstanding, or the duration of the period during which the board owns a project as defined in section 307.695 of the Revised Code, whichever duration is longest.

(6) The board of county commissioners of an eligible county as defined in section 307.678 of the Revised Code may, by resolution, amend a resolution levying a tax under ~~this~~ division (A) of this section to provide that revenue from the tax, not to exceed five hundred thousand dollars each year, may be used as described in division (E) of section 307.678 of the Revised Code.

(7) Notwithstanding division ~~(A)(1)~~ (A) of this section, the board of county commissioners of

a county described in division ~~(A)(8)(a)~~ (H)(1) of this section may, by resolution, amend a resolution levying a tax under ~~this~~ division (A) of this section to provide that all or a portion of the revenue from the tax, including any revenue otherwise required to be returned to townships or municipal corporations under ~~this~~ that division, may be used or pledged for the payment of debt service on securities issued to pay the costs of constructing, operating, and maintaining sports facilities described in division ~~(A)(8)(b)~~ (H)(2) of this section.

(8) The board of county commissioners of a county described in division ~~(A)(9)~~ (I) of this section may, by resolution, amend a resolution levying a tax under ~~this~~ division (A) of this section to provide that all or a portion of the revenue from the tax may be used for the purposes described in section 307.679 of the Revised Code.

~~(2)~~ (B) A board of county commissioners that levies an excise tax under division ~~(A)(1)~~ (A) of this section on June 30, 1997, at a rate of three per cent, and that has pledged revenue from the tax to an agreement entered into under section 307.695 of the Revised Code or, in the case of the board of county commissioners of an eligible county as defined in section 307.695 of the Revised Code, has amended a resolution levying a tax under division ~~(C)~~ (M) of this section to provide that proceeds from the tax shall be used by the board as described in division (H) of section 307.695 of the Revised Code, may, at any time by a resolution adopted by a majority of the members of the board, amend the resolution levying a tax under division ~~(A)(1)~~ (A) of this section to provide for an increase in the rate of that tax up to seven per cent on each transaction; to provide that revenue from the increase in the rate shall be used as described in division (H) of section 307.695 of the Revised Code or be spent solely to make contributions to the convention and visitors' bureau operating within the county to be used specifically for promotion, advertising, and marketing of the region in which the county is located; and to provide that the rate in excess of the three per cent levied under division ~~(A)(1)~~ (A) of this section shall remain in effect at the rate at which it is imposed for the duration of the period during which any agreement is in effect that was entered into under section 307.695 of the Revised Code by the board of county commissioners levying a tax under division ~~(A)(1)~~ (A) of this section, the duration of the period during which any securities issued by the board under division (I) of section 307.695 of the Revised Code are outstanding, or the duration of the period during which the board owns a project as defined in section 307.695 of the Revised Code, whichever duration is longest. The amendment also shall provide that no portion of that revenue need be returned to townships or municipal corporations as would otherwise be required under division ~~(A)(1)~~ (A) of this section.

~~(3)~~ (C)(1) As used in division (C) of this section, "cost" and "facility" have the same meanings as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.

(2) A board of county commissioners that levies a tax under division ~~(A)(1)~~ (A) of this section on March 18, 1999, at a rate of three per cent may, by resolution adopted not later than forty-five days after March 18, 1999, amend the resolution levying the tax to provide for all of the following:

(a) That the rate of the tax shall be increased by not more than an additional four per cent on each transaction;

(b) That all of the revenue from the increase in the rate shall be pledged and contributed to a

convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code on or before November 15, 1998, and used to pay costs of constructing, maintaining, operating, and promoting a facility in the county, including paying bonds, or notes issued in anticipation of bonds, as provided by that chapter;

(c) That no portion of the revenue arising from the increase in rate need be returned to municipal corporations or townships as otherwise required under division ~~(A)(1)~~ (A) of this section;

(d) That the increase in rate shall not be subject to diminution by initiative or referendum or by law while any bonds, or notes in anticipation of bonds, issued by the authority under Chapter 351. of the Revised Code to which the revenue is pledged, remain outstanding in accordance with their terms, unless provision is made by law or by the board of county commissioners for an adequate substitute therefor that is satisfactory to the trustee if a trust agreement secures the bonds.

(3) Division ~~(A)(3)~~ (C) of this section does not apply to the board of county commissioners of any county in which a convention center or facility exists or is being constructed on November 15, 1998, or of any county in which a convention facilities authority levies a tax pursuant to section 351.021 of the Revised Code on that date.

~~As used in division (A)(3) of this section, "cost" and "facility" have the same meanings as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.~~

~~(4)(a)~~ (D)(1) As used in division (D) of this section, "cost" has the same meaning as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.

(2) A board of county commissioners that levies a tax under division ~~(A)(1)~~ (A) of this section on June 30, 2002, at a rate of three per cent may, by resolution adopted not later than September 30, 2002, amend the resolution levying the tax to provide for all of the following:

~~(i)~~ (a) That the rate of the tax shall be increased by not more than an additional three and one-half per cent on each transaction;

~~(ii)~~ (b) That all of the revenue from the increase in rate shall be pledged and contributed to a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code on or before May 15, 2002, and be used to pay costs of constructing, expanding, maintaining, operating, or promoting a convention center in the county, including paying bonds, or notes issued in anticipation of bonds, as provided by that chapter;

~~(iii)~~ (c) That no portion of the revenue arising from the increase in rate need be returned to municipal corporations or townships as otherwise required under division ~~(A)(1)~~ (A) of this section;

~~(iv)~~ (d) That the increase in rate shall not be subject to diminution by initiative or referendum or by law while any bonds, or notes in anticipation of bonds, issued by the authority under Chapter 351. of the Revised Code to which the revenue is pledged, remain outstanding in accordance with their terms, unless provision is made by law or by the board of county commissioners for an adequate substitute therefor that is satisfactory to the trustee if a trust agreement secures the bonds.

~~(b)~~ (3) Any board of county commissioners that, pursuant to division ~~(A)(4)(a)~~ (D)(2) of this section, has amended a resolution levying the tax authorized by division ~~(A)(1)~~ (A) of this section may further amend the resolution to provide that the revenue referred to in division ~~(A)(4)(a)(ii)~~ (D)(2)(b) of this section shall be pledged and contributed both to a convention facilities authority to pay

the costs of constructing, expanding, maintaining, or operating one or more convention centers in the county, including paying bonds, or notes issued in anticipation of bonds, as provided in Chapter 351. of the Revised Code, and to a convention and visitors' bureau to pay the costs of promoting one or more convention centers in the county.

~~As used in division (A)(4) of this section, "cost" has the same meaning as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.~~

~~(5)(a)~~ (E)(1) As used in division ~~(A)(5)~~ (E) of this section:

~~(i)~~ (a) "Port authority" means a port authority created under Chapter 4582. of the Revised Code.

~~(ii)~~ (b) "Port authority military-use facility" means port authority facilities on which or adjacent to which is located an installation of the armed forces of the United States, a reserve component thereof, or the national guard and at least part of which is made available for use, for consideration, by the armed forces of the United States, a reserve component thereof, or the national guard.

~~(b)~~ (2) For the purpose of contributing revenue to pay operating expenses of a port authority that operates a port authority military-use facility, the board of county commissioners of a county that created, participated in the creation of, or has joined such a port authority may do one or both of the following:

~~(i)~~ (a) Amend a resolution previously adopted under division ~~(A)(1)~~ (A) of this section to designate some or all of the revenue from the tax levied under the resolution to be used for that purpose, notwithstanding that division;

~~(ii)~~ (b) Amend a resolution previously adopted under division ~~(A)(1)~~ (A) of this section to increase the rate of the tax by not more than an additional two per cent and use the revenue from the increase exclusively for that purpose.

~~(c)~~ (3) If a board of county commissioners amends a resolution to increase the rate of a tax as authorized in division ~~(A)(5)(b)(ii)~~ (E)(2)(b) of this section, the board also may amend the resolution to specify that the increase in rate of the tax does not apply to "hotels," as otherwise defined in section 5739.01 of the Revised Code, having fewer rooms used for the accommodation of guests than a number of rooms specified by the board.

~~(6)~~ (F)(1) A board of county commissioners of a county organized under a county charter adopted pursuant to Article X, Section 3, Ohio Constitution, and that levies an excise tax under division ~~(A)(1)~~ (A) of this section at a rate of three per cent and levies an additional excise tax under division ~~(E)~~ (O) of this section at a rate of one and one-half per cent may, by resolution adopted not later than January 1, 2008, by a majority of the members of the board, amend the resolution levying a tax under division ~~(A)(1)~~ (A) of this section to provide for an increase in the rate of that tax by not more than an additional one per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. Notwithstanding divisions ~~(A)(1)~~ (A) and ~~(E)~~ (O) of this section, the resolution shall provide that all of the revenue from the increase in rate, after deducting the real and actual costs of administering the tax, shall be used to pay the costs of improving, expanding, equipping, financing, or operating a convention center by a convention and visitors' bureau in the county. ~~The~~

(2) The increase in rate shall remain in effect for the period specified in the resolution, not to exceed ten years, and may be extended for an additional period of time not to exceed ten years thereafter by a resolution adopted by a majority of the members of the board. ~~The~~

(3) The increase in rate shall be subject to the regulations adopted under division ~~(A)(1)~~ (A) of this section, except that the resolution may provide that no portion of the revenue from the increase in the rate shall be returned to townships or municipal corporations as would otherwise be required under that division.

~~(7)~~ (G)(1) Division ~~(A)(7)~~ (G) of this section applies only to a county with a population greater than sixty-five thousand and less than seventy thousand according to the most recent federal decennial census and in which, on December 31, 2006, an excise tax is levied under division ~~(A)(1)~~ (A) of this section at a rate not less than and not greater than three per cent, and in which the most recent increase in the rate of that tax was enacted or took effect in November 1984.

(2) The board of county commissioners of a county to which ~~this~~ division (G) of this section applies, by resolution adopted by a majority of the members of the board, may increase the rate of the tax by not more than one per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The increase in rate shall be for the purpose of paying expenses deemed necessary by the convention and visitors' bureau operating in the county to promote travel and tourism. ~~The~~

(3) The increase in rate shall remain in effect for the period specified in the resolution, not to exceed twenty years, provided that the increase in rate may not continue beyond the time when the purpose for which the increase is levied ceases to exist. If revenue from the increase in rate is pledged to the payment of debt charges on securities, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding, unless provision is made by law or by the board of county commissioners for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges. ~~The~~

(4) The increase in rate shall be subject to the regulations adopted under division ~~(A)(1)~~ (A) of this section, except that the resolution may provide that no portion of the revenue from the increase in the rate shall be returned to townships or municipal corporations as would otherwise be required under division ~~(A)(1)~~ (A) of this section. ~~A~~

(5) A resolution adopted under division ~~(A)(7)~~ (G) of this section is subject to referendum under sections 305.31 to 305.99 of the Revised Code.

~~(8)(a)~~ (H)(1) Division ~~(A)(8)~~ (H) of this section applies only to a county satisfying all of the following:

~~(i)~~ (a) The population of the county is greater than one hundred seventy-five thousand and less than two hundred twenty-five thousand according to the most recent federal decennial census.

~~(ii)~~ (b) An amusement park with an average yearly attendance in excess of two million guests is located in the county.

~~(iii)~~ (c) On December 31, 2014, an excise tax was levied in the county under division ~~(A)(1)~~ (A) of this section at a rate of three per cent.

~~(b)~~ (2) The board of county commissioners of a county to which ~~this~~ division (H) of this section applies, by resolution adopted by a majority of the members of the board, may increase the rate of the tax by not more than one per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The increase in rate shall be used to pay the costs of constructing and

maintaining facilities owned by the county or by a port authority created under Chapter 4582. of the Revised Code, and designed to host sporting events and expenses deemed necessary by the convention and visitors' bureau operating in the county to promote travel and tourism with reference to the sports facilities, and to pay or pledge to the payment of debt service on securities issued to pay the costs of constructing, operating, and maintaining the sports facilities. ~~The~~

(3) The increase in rate shall remain in effect for the period specified in the resolution. If revenue from the increase in rate is pledged to the payment of debt charges on securities, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding, unless provision is made by law or by the board of county commissioners for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges. ~~The~~

(4) The increase in rate shall be subject to the regulations adopted under division ~~(A)(1)~~ (A) of this section, except that the resolution may provide that no portion of the revenue from the increase in the rate shall be returned to townships or municipal corporations as would otherwise be required under division ~~(A)(1)~~ (A) of this section.

~~(9)~~ (I)(1) The board of county commissioners of a county with a population greater than seventy-five thousand and less than seventy-eight thousand, by resolution adopted by a majority of the members of the board not later than October 15, 2015, may increase the rate of the tax by not more than one per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The increase in rate shall be for the purposes described in section 307.679 of the Revised Code or for the promotion of travel and tourism in the county, including travel and tourism to sports facilities. ~~The~~

(2) The increase in rate shall remain in effect for the period specified in the resolution and as necessary to fulfill the county's obligations under a cooperative agreement entered into under section 307.679 of the Revised Code. If the resolution is adopted by the board before September 29, 2015, but after that enactment becomes law, the increase in rate shall become effective beginning on September 29, 2015. If revenue from the increase in rate is pledged to the payment of debt charges on securities, or to substitute for other revenues pledged to the payment of such debt, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding, unless provision is made by law or by the board of county commissioners for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges. ~~The~~

(3) The increase in rate shall be subject to the regulations adopted under division ~~(A)(1)~~ (A) of this section, except that no portion of the revenue from the increase in the rate shall be returned to townships or municipal corporations as would otherwise be required under division ~~(A)(1)~~ (A) of this section.

~~(10)~~ (J)(1) Division ~~(A)(10)~~ (J) of this section applies only to counties satisfying either of the following:

(a) A county that, on July 1, 2015, does not levy an excise tax under division ~~(A)(1)~~ (A) of this section and that has a population of at least thirty-nine thousand but not more than forty thousand according to the 2010 federal decennial census;

(b) A county that, on July 1, 2015, levies an excise tax under division ~~(A)(1)~~ (A) of this

section at a rate of three per cent and that has a population of at least seventy-one thousand but not more than seventy-five thousand according to 2010 federal decennial census.

(2) The board of county commissioners of a county to which division ~~(A)(10)~~ (J) of this section applies, by resolution adopted by a majority of the members of the board, may levy an excise tax at a rate not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests for the purpose of acquiring, constructing, equipping, or repairing permanent improvements, as defined in section 133.01 of the Revised Code. ~~If~~

(3) If the board does not levy a tax under division ~~(A)(1)~~ (A) of this section, the board shall establish regulations necessary to provide for the administration of the tax, which may prescribe the time for payment of the tax and the imposition of penalty or interest subject to the limitations on penalty and interest provided in division ~~(A)(1)~~ (A) of this section. No portion of the revenue shall be returned to townships or municipal corporations in the county unless otherwise provided by resolution of the board. ~~The~~

(4) The tax shall apply throughout the territory of the county, including in any township or municipal corporation levying an excise tax under ~~division (B) of this section or~~ division (A) or (B) of section 5739.08 of the Revised Code. The levy of the tax is subject to referendum as provided under section 305.31 of the Revised Code.

(5) The tax shall remain in effect for the period specified in the resolution. If revenue from the increase in rate is pledged to the payment of debt charges on securities, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding unless provision is made by law or by the board for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges.

~~(11)~~ (K)(1) The board of county commissioners of an eligible county, as defined in section 307.678 of the Revised Code, that levies an excise tax under division ~~(A)(1)~~ (A) of this section on July 1, 2017, at a rate of three per cent may, by resolution adopted by a majority of the members of the board, amend the resolution levying the tax to increase the rate of the tax by not more than an additional three per cent on each transaction. ~~No~~

(2) No portion of the revenue shall be returned to townships or municipal corporations in the county unless otherwise provided by resolution of the board. Otherwise, the revenue from the increase in the rate shall be distributed and used in the same manner described under division ~~(A)(1)~~ (A) of this section or distributed or used to provide credit enhancement facilities as authorized under section 307.678 of the Revised Code. ~~The~~

(3) The increase in rate shall remain in effect for the period specified in the resolution. If revenue from the increase in rate is pledged to the payment of debt charges on securities, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding unless provision is made by law or by the board for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges.

~~(12)(a)~~ (L)(1) As used in ~~this~~ division (L) of this section:

~~(i)~~ (a) "Eligible county" means a county that has a population greater than one hundred ninety thousand and less than two hundred thousand according to the 2010 federal decennial census and that levies an excise tax under division ~~(A)(1)~~ (A) of this section at a rate of three per cent.

~~(ii)~~ (b) "Professional sports facility" means a sports facility that is intended to house major or

minor league professional athletic teams, including a stadium, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection with, the operation of the facility.

~~(b)~~ (2) Subject to division ~~(A)(12)(c)~~ (L)(3) of this section, the board of county commissioners of an eligible county, by resolution adopted by a majority of the members of the board, may increase the rate of the tax by not more than one per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. Revenue from the increase in rate shall be used for the purposes of paying the costs of constructing, improving, and maintaining a professional sports facility in the county and paying expenses considered necessary by the convention and visitors' bureau operating in the county to promote travel and tourism with respect to that professional sports facility. The tax shall take effect only after the convention and visitors' bureau enters into a contract for the construction, improvement, or maintenance of a professional sports facility that is or will be located on property acquired, in whole or in part, with revenue from the increased rate, and thereafter shall remain in effect for the period specified in the resolution. If revenue from the increase in rate is pledged to the payment of debt charges on securities, the increase in rate is not subject to diminution by initiative or referendum or by law for so long as the securities are outstanding, unless a provision is made by law or by the board of county commissioners for an adequate substitute for that revenue that is satisfactory to the trustee if a trust agreement secures payment of the debt charges. The increase in rate shall be subject to the regulations adopted under division ~~(A)(1)~~ (A) of this section, except that the resolution may provide that no portion of the revenue from the increase in the rate shall be returned to townships or municipal corporations as would otherwise be required under division ~~(A)(1)~~ (A) of this section.

~~(c)~~ (3) If, on December 31, 2019, the convention and visitors' bureau has not entered into a contract for the construction, improvement, or maintenance of a professional sports facility that is or will be located on property acquired, in whole or in part, with revenue from the increased rate, the authority to levy the tax under division ~~(A)(12)(b)~~ (L)(2) of this section is hereby repealed on that date.

~~(B)(1) The legislative authority of a municipal corporation or the board of trustees of a township that is not wholly or partly located in a county that has in effect a resolution levying an excise tax pursuant to division (A)(1) of this section may, by ordinance or resolution, levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The legislative authority of the municipal corporation or the board of trustees of the township shall deposit at least fifty per cent of the revenue from the tax levied pursuant to this division into a separate fund, which shall be spent solely to make contributions to convention and visitors' bureaus operating within the county in which the municipal corporation or township is wholly or partly located, and the balance of that revenue shall be deposited in the general fund. The municipal corporation or township shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. The levy of a tax under this division is in addition to any tax imposed on the same transaction~~

~~by a municipal corporation or a township as authorized by division (A) of section 5739.08 of the Revised Code.~~

~~(2)(a) The legislative authority of the most populous municipal corporation located wholly or partly in a county in which the board of county commissioners has levied a tax under division (A)(4) of this section may amend, on or before September 30, 2002, that municipal corporation's ordinance or resolution that levies an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests, to provide for all of the following:~~

~~(i) That the rate of the tax shall be increased by not more than an additional one per cent on each transaction;~~

~~(ii) That all of the revenue from the increase in rate shall be pledged and contributed to a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code on or before May 15, 2002, and be used to pay costs of constructing, expanding, maintaining, operating, or promoting a convention center in the county, including paying bonds, or notes issued in anticipation of bonds, as provided by that chapter;~~

~~(iii) That the increase in rate shall not be subject to diminution by initiative or referendum or by law while any bonds, or notes in anticipation of bonds, issued by the authority under Chapter 351. of the Revised Code to which the revenue is pledged, remain outstanding in accordance with their terms, unless provision is made by law, by the board of county commissioners, or by the legislative authority, for an adequate substitute therefor that is satisfactory to the trustee if a trust agreement secures the bonds.~~

~~(b) The legislative authority of a municipal corporation that, pursuant to division (B)(2)(a) of this section, has amended its ordinance or resolution to increase the rate of the tax authorized by division (B)(1) of this section may further amend the ordinance or resolution to provide that the revenue referred to in division (B)(2)(a)(ii) of this section shall be pledged and contributed both to a convention facilities authority to pay the costs of constructing, expanding, maintaining, or operating one or more convention centers in the county, including paying bonds, or notes issued in anticipation of bonds, as provided in Chapter 351. of the Revised Code, and to a convention and visitors' bureau to pay the costs of promoting one or more convention centers in the county.~~

~~As used in division (B)(2) of this section, "cost" has the same meaning as in section 351.01 of the Revised Code, and "convention center" has the same meaning as in section 307.695 of the Revised Code.~~

~~(3) The legislative authority of an eligible municipal corporation may amend, on or before December 31, 2017, that municipal corporation's ordinance or resolution that levies an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests, to provide for the following:~~

~~(a) That the rate of the tax shall be increased by not more than an additional three per cent on each transaction;~~

~~(b) That all of the revenue from the increase in rate shall be used by the municipal corporation for economic development and tourism-related purposes.~~

~~As used in division (B)(3) of this section, "eligible municipal corporation" means a municipal corporation that, on the effective date of the amendment of this section by H.B. 49 of the 132nd general assembly, September 29, 2017, levied a tax under division (B)(1) of this section at a rate of~~

~~three per cent and that is located in a county that, on that date, levied a tax under division (A) of this section at a rate of three per cent and that has, according to the most recent federal decennial census, a population exceeding three hundred thousand but not greater than three hundred fifty thousand.~~

~~(C)~~ (M)(1) For the purposes described in section 307.695 of the Revised Code and to cover the costs of administering the tax, a board of county commissioners of a county where a tax imposed under division ~~(A)(1)~~ (A) of this section is in effect may, by resolution adopted within ninety days after July 15, 1985, by a majority of the members of the board, levy an additional excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The tax authorized by ~~this~~ division (M) of this section shall be in addition to any tax that is levied pursuant to ~~division~~ divisions (A) to (L) of this section, but it shall not apply to transactions subject to a tax levied by a municipal corporation or township pursuant to ~~the authorization granted by division (A) of~~ section 5739.08 of the Revised Code. ~~The~~

(2) The board shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. ~~All~~

(3) All revenues arising from the tax shall be expended in accordance with section 307.695 of the Revised Code. The board of county commissioners of an eligible county as defined in section 307.695 of the Revised Code may, by resolution adopted by a majority of the members of the board, amend the resolution levying a tax under this division to provide that the revenue from the tax shall be used by the board as described in division (H) of section 307.695 of the Revised Code. ~~A~~

(4) A tax imposed under this division shall remain in effect at the rate at which it is imposed for the duration of the period during which any agreement entered into by the board under section 307.695 of the Revised Code is in effect, the duration of the period during which any securities issued by the board under division (I) of section 307.695 of the Revised Code are outstanding, or the duration of the period during which the board owns a project as defined in section 307.695 of the Revised Code, whichever duration is longest.

~~(D)~~ (N)(1) For the purpose of providing contributions under division (B)(1) of section 307.671 of the Revised Code to enable the acquisition, construction, and equipping of a port authority educational and cultural facility in the county and, to the extent provided for in the cooperative agreement authorized by that section, for the purpose of paying debt service charges on bonds, or notes in anticipation of bonds, described in division (B)(1)(b) of that section, a board of county commissioners, by resolution adopted within ninety days after December 22, 1992, by a majority of the members of the board, may levy an additional excise tax not to exceed one and one-half per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The excise tax authorized by ~~this~~ division (N) of this section shall be in addition to any tax that is levied pursuant to divisions (A)~~, (B), and (C)~~ to (M) of this section, to any excise tax levied pursuant to section 5739.08 of the Revised Code, and to any excise tax levied pursuant to section 351.021 of the Revised Code. ~~The~~

(2) The board of county commissioners shall establish all regulations necessary to provide for the administration and allocation of the tax that are not inconsistent with this section or section

307.671 of the Revised Code. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. ~~All~~

(3) All revenues arising from the tax shall be expended in accordance with section 307.671 of the Revised Code and division ~~(D)~~ (N) of this section. The levy of a tax imposed under ~~this~~ division (N) of this section may not commence prior to the first day of the month next following the execution of the cooperative agreement authorized by section 307.671 of the Revised Code by all parties to that agreement. ~~The~~

(4) The tax shall remain in effect at the rate at which it is imposed for the period of time described in division (C) of section 307.671 of the Revised Code for which the revenue from the tax has been pledged by the county to the corporation pursuant to that section, but, to any extent provided for in the cooperative agreement, for no lesser period than the period of time required for payment of the debt service charges on bonds, or notes in anticipation of bonds, described in division (B)(1)(b) of that section.

~~(E)~~ (O)(1) For the purpose of paying the costs of acquiring, constructing, equipping, and improving a municipal educational and cultural facility, including debt service charges on bonds provided for in division (B) of section 307.672 of the Revised Code, and for any additional purposes determined by the county in the resolution levying the tax or amendments to the resolution, including subsequent amendments providing for paying costs of acquiring, constructing, renovating, rehabilitating, equipping, and improving a port authority educational and cultural performing arts facility, as defined in section 307.674 of the Revised Code, and including debt service charges on bonds provided for in division (B) of section 307.674 of the Revised Code, the legislative authority of a county, by resolution adopted within ninety days after June 30, 1993, by a majority of the members of the legislative authority, may levy an additional excise tax not to exceed one and one-half per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. The excise tax authorized by ~~this~~ division (O) of this section shall be in addition to any tax that is levied pursuant to divisions (A)~~, (B), (C), and (D)~~ to (N) of this section, to any excise tax levied pursuant to section 5739.08 of the Revised Code, and to any excise tax levied pursuant to section 351.021 of the Revised Code. ~~The~~

(2) The legislative authority of the county shall establish all regulations necessary to provide for the administration and allocation of the tax. The regulations may prescribe the time for payment of the tax, and may provide for the imposition of a penalty or interest, or both, for late payments, provided that the penalty does not exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed pursuant to section 5703.47 of the Revised Code. ~~All~~

(3) All revenues arising from the tax shall be expended in accordance with section 307.672 of the Revised Code and this division. The levy of a tax imposed under this division shall not commence prior to the first day of the month next following the execution of the cooperative agreement authorized by section 307.672 of the Revised Code by all parties to that agreement. The tax shall remain in effect at the rate at which it is imposed for the period of time determined by the legislative authority of the county. That period of time shall not exceed fifteen years, except that the

legislative authority of a county with a population of less than two hundred fifty thousand according to the most recent federal decennial census, by resolution adopted by a majority of its members before the original tax expires, may extend the duration of the tax for an additional period of time. The additional period of time by which a legislative authority extends a tax levied under ~~this~~ division (O) of this section shall not exceed fifteen years.

~~(F)~~ (P)(1) The legislative authority of a county that has levied a tax under division ~~(E)~~ (O) of this section may, by resolution adopted within one hundred eighty days after January 4, 2001, by a majority of the members of the legislative authority, amend the resolution levying a tax under that division to provide for the use of the proceeds of that tax, to the extent that it is no longer needed for its original purpose as determined by the parties to a cooperative agreement amendment pursuant to division (D) of section 307.672 of the Revised Code, to pay costs of acquiring, constructing, renovating, rehabilitating, equipping, and improving a port authority educational and cultural performing arts facility, including debt service charges on bonds provided for in division (B) of section 307.674 of the Revised Code, and to pay all obligations under any guaranty agreements, reimbursement agreements, or other credit enhancement agreements described in division (C) of section 307.674 of the Revised Code. ~~The~~

(2) The resolution may also provide for the extension of the tax at the same rate for the longer of the period of time determined by the legislative authority of the county, but not to exceed an additional twenty-five years, or the period of time required to pay all debt service charges on bonds provided for in division (B) of section 307.672 of the Revised Code and on port authority revenue bonds provided for in division (B) of section 307.674 of the Revised Code. ~~All~~

(3) All revenues arising from the amendment and extension of the tax shall be expended in accordance with section 307.674 of the Revised Code~~, this division,~~ and ~~division (E)~~ divisions (O) and (P) of this section.

~~(G) For purposes of a tax levied by a county, township, or municipal corporation under this section or section 5739.08 of the Revised Code, a board of county commissioners, board of township trustees, or the legislative authority of a municipal corporation may adopt a resolution or ordinance at any time specifying that "hotel," as otherwise defined in section 5739.01 of the Revised Code, includes the following:~~

~~(1) Establishments in which fewer than five rooms are used for the accommodation of guests.~~

~~(2) Establishments at which rooms are used for the accommodation of guests regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry; and, in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For the purposes of division (G)(2) of this section, two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person.~~

~~The resolution or ordinance may apply to a tax imposed pursuant to this section prior to the adoption of the resolution or ordinance if the resolution or ordinance so states, but the tax shall not apply to transactions by which lodging by such an establishment is provided to transient guests prior~~

~~to the adoption of the resolution or ordinance.~~

~~(H)(1)~~ (Q)(1) As used in ~~this~~ division (Q) of this section:

(a) "Convention facilities authority" has the same meaning as in section 351.01 of the Revised Code.

(b) "Convention center" has the same meaning as in section 307.695 of the Revised Code.

(2) Notwithstanding any contrary provision of division ~~(D)~~ (N) of this section, the legislative authority of a county with a population of one million or more according to the most recent federal decennial census that has levied a tax under division ~~(D)~~ (N) of this section may, by resolution adopted by a majority of the members of the legislative authority, provide for the extension of such levy and may provide that the proceeds of that tax, to the extent that they are no longer needed for their original purpose as defined by a cooperative agreement entered into under section 307.671 of the Revised Code, shall be deposited into the county general revenue fund. The resolution shall provide for the extension of the tax at a rate not to exceed the rate specified in division ~~(D)~~ (N) of this section for a period of time determined by the legislative authority of the county, but not to exceed an additional forty years.

(3) The legislative authority of a county with a population of one million or more that has levied a tax under division ~~(A)(1)~~ (A) of this section may, by resolution adopted by a majority of the members of the legislative authority, increase the rate of the tax levied by such county under division ~~(A)(1)~~ (A) of this section to a rate not to exceed five per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. Notwithstanding any contrary provision of division ~~(A)(1)~~ (A) of this section, the resolution may provide that all collections resulting from the rate levied in excess of three per cent, after deducting the real and actual costs of administering the tax, shall be deposited in the county general fund.

(4) The legislative authority of a county with a population of one million or more that has levied a tax under division ~~(A)(1)~~ (A) of this section may, by resolution adopted on or before August 30, 2004, by a majority of the members of the legislative authority, provide that all or a portion of the proceeds of the tax levied under division ~~(A)(1)~~ (A) of this section, after deducting the real and actual costs of administering the tax and the amounts required to be returned to townships and municipal corporations with respect to the first three per cent levied under division ~~(A)(1)~~ (A) of this section, shall be deposited in the county general fund, provided that such proceeds shall be used to satisfy any pledges made in connection with an agreement entered into under section 307.695 of the Revised Code.

(5) No amount collected from a tax levied, extended, or required to be deposited in the county general fund under division ~~(H)~~ (Q) of this section shall be contributed to a convention facilities authority, corporation, or other entity created after July 1, 2003, for the principal purpose of constructing, improving, expanding, equipping, financing, or operating a convention center unless the mayor of the municipal corporation in which the convention center is to be operated by that convention facilities authority, corporation, or other entity has consented to the creation of that convention facilities authority, corporation, or entity. Notwithstanding any contrary provision of section 351.04 of the Revised Code, if a tax is levied by a county under division ~~(H)~~ (Q) of this section, the board of county commissioners of that county may determine the manner of selection, the qualifications, the number, and terms of office of the members of the board of directors of any

convention facilities authority, corporation, or other entity described in division ~~(H)(5)~~ (Q)(5) of this section.

(6)(a) No amount collected from a tax levied, extended, or required to be deposited in the county general fund under division ~~(H)~~ (Q) of this section may be used for any purpose other than paying the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center and for the real and actual costs of administering the tax, unless, prior to the adoption of the resolution of the legislative authority of the county authorizing the levy, extension, increase, or deposit, the county and the mayor of the most populous municipal corporation in that county have entered into an agreement as to the use of such amounts, provided that such agreement has been approved by a majority of the mayors of the other municipal corporations in that county. The agreement shall provide that the amounts to be used for purposes other than paying the convention center or administrative costs described in division ~~(H)(6)(a)~~ (Q)(6)(a) of this section be used only for the direct and indirect costs of capital improvements, including the financing of capital improvements.

(b) If the county in which the tax is levied has an association of mayors and city managers, the approval of that association of an agreement described in division ~~(H)(6)(a)~~ (Q)(6)(a) of this section shall be considered to be the approval of the majority of the mayors of the other municipal corporations for purposes of that division.

(7) Each year, the auditor of state shall conduct an audit of the uses of any amounts collected from taxes levied, extended, or deposited under division ~~(H)~~ (Q) of this section and shall prepare a report of the auditor of state's findings. The auditor of state shall submit the report to the legislative authority of the county that has levied, extended, or deposited the tax, the speaker of the house of representatives, the president of the senate, and the leaders of the minority parties of the house of representatives and the senate.

~~(I)(1)~~ (R)(1) As used in ~~this~~ division (R) of this section:

(a) "Convention facilities authority" has the same meaning as in section 351.01 of the Revised Code.

(b) "Convention center" has the same meaning as in section 307.695 of the Revised Code.

(2) Notwithstanding any contrary provision of division ~~(D)~~ (N) of this section, the legislative authority of a county with a population of one million two hundred thousand or more according to the most recent federal decennial census or the most recent annual population estimate published or released by the United States census bureau at the time the resolution is adopted placing the levy on the ballot, that has levied a tax under division ~~(D)~~ (N) of this section may, by resolution adopted by a majority of the members of the legislative authority, provide for the extension of such levy and may provide that the proceeds of that tax, to the extent that the proceeds are no longer needed for their original purpose as defined by a cooperative agreement entered into under section 307.671 of the Revised Code and after deducting the real and actual costs of administering the tax, shall be used for paying the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center. The resolution shall provide for the extension of the tax at a rate not to exceed the rate specified in division ~~(D)~~ (N) of this section for a period of time determined by the legislative authority of the county, but not to exceed an additional forty years.

(3) The legislative authority of a county with a population of one million two hundred

thousand or more that has levied a tax under division ~~(A)(1)~~ (A) of this section may, by resolution adopted by a majority of the members of the legislative authority, increase the rate of the tax levied by such county under division ~~(A)(1)~~ (A) of this section to a rate not to exceed five per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests. Notwithstanding any contrary provision of division ~~(A)(1)~~ (A) of this section, the resolution shall provide that all collections resulting from the rate levied in excess of three per cent, after deducting the real and actual costs of administering the tax, shall be used for paying the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center.

(4) The legislative authority of a county with a population of one million two hundred thousand or more that has levied a tax under division ~~(A)(1)~~ (A) of this section may, by resolution adopted on or before July 1, 2008, by a majority of the members of the legislative authority, provide that all or a portion of the proceeds of the tax levied under division ~~(A)(1)~~ (A) of this section, after deducting the real and actual costs of administering the tax and the amounts required to be returned to townships and municipal corporations with respect to the first three per cent levied under division ~~(A)(1)~~ (A) of this section, shall be used to satisfy any pledges made in connection with an agreement entered into under section 307.695 of the Revised Code or shall otherwise be used for paying the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center.

(5) Any amount collected from a tax levied or extended under division ~~(I)~~ (R) of this section may be contributed to a convention facilities authority created before July 1, 2005, but no amount collected from a tax levied or extended under division ~~(I)~~ (R) of this section may be contributed to a convention facilities authority, corporation, or other entity created after July 1, 2005, unless the mayor of the municipal corporation in which the convention center is to be operated by that convention facilities authority, corporation, or other entity has consented to the creation of that convention facilities authority, corporation, or entity.

~~(J)(1) Except as provided in division (J)(2) of this section, money collected by a county and distributed under this section to a convention and visitors' bureau in existence as of June 30, 2013, the effective date of H.B. 59 of the 130th general assembly, except for any such money pledged, as of that effective date, to the payment of debt service charges on bonds, notes, securities, or lease agreements, shall be used solely for tourism sales, marketing and promotion, and their associated costs, including, but not limited to, operational and administrative costs of the bureau, sales and marketing, and maintenance of the physical bureau structure.~~

~~(2) A convention and visitors' bureau that has entered into an agreement under section 307.678 of the Revised Code may use revenue it receives from a tax levied under division (A)(1) of this section as described in division (E) of section 307.678 of the Revised Code.~~

~~(K)~~ (S) As used in division (S) of this section, "soldiers' memorial" means a memorial constructed and funded under Chapter 345. of the Revised Code.

The board of county commissioners of a county with a population between one hundred three thousand and one hundred seven thousand according to the most recent federal decennial census, by resolution adopted by a majority of the members of the board within six months after September 15, 2014, ~~the effective date of H.B. 483 of the 130th general assembly,~~ may levy a tax not to exceed three per cent on transactions by which a hotel is or is to be furnished to transient guests. The purpose

of the tax shall be to pay the costs of expanding, maintaining, or operating a soldiers' memorial and the costs of administering the tax. All revenue arising from the tax shall be credited to one or more special funds in the county treasury and shall be spent solely for the purposes of paying those costs. ~~The~~

The board of county commissioners shall adopt all rules necessary to provide for the administration of the tax subject to the same limitations on imposing penalty or interest under division ~~(A)(1)~~ (A) of this section.

~~As used in this division "soldiers' memorial" means a memorial constructed and funded under Chapter 345. of the Revised Code.~~

~~(L)~~ (T) As used in division (T) of this section, "eligible county" means a county in which a county agricultural society or independent agricultural society is organized under section 1711.01 or 1711.02 of the Revised Code, provided the agricultural society owns a facility or site in the county at which an annual harness horse race is conducted where one-day attendance equals at least forty thousand attendees.

A board of county commissioners of an eligible county, by resolution adopted by a majority of the members of the board, may levy an excise tax at the rate of up to three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests for the purpose of paying the costs of permanent improvements at sites at which one or more agricultural societies conduct fairs or exhibits, paying the costs of maintaining or operating such permanent improvements, and paying the costs of administering the tax. ~~A~~

A resolution adopted under ~~this~~ division (T) of this section, other than a resolution that only extends the period of time for which the tax is levied, shall direct the board of elections to submit the question of the proposed lodging tax to the electors of the county at a special election held on the date specified by the board in the resolution, provided that the election occurs not less than ninety days after a certified copy of the resolution is transmitted to the board of elections. A resolution submitted to the electors under ~~this~~ division (T) of this section shall not go into effect unless it is approved by a majority of those voting upon it. The resolution takes effect on the date the board of county commissioners receives notification from the board of elections of an affirmative vote.

The tax shall remain in effect for the period specified in the resolution, not to exceed five years, and may be extended for an additional period of time not to exceed fifteen years thereafter by a resolution adopted by a majority of the members of the board. A resolution extending the period of time for which the tax is in effect is not subject to approval of the electors of the county, but is subject to referendum under sections 305.31 to 305.99 of the Revised Code. All revenue arising from the tax shall be credited to one or more special funds in the county treasury and shall be spent solely for the purposes of paying the costs of such permanent improvements and maintaining or operating the improvements. Revenue allocated for the use of a county agricultural society may be credited to the county agricultural society fund created in section 1711.16 of the Revised Code upon appropriation by the board. If revenue is credited to that fund, it shall be expended only as provided in that section.

The board of county commissioners shall adopt all rules necessary to provide for the administration of the tax. The rules may prescribe the time for payment of the tax, and may provide for the imposition or penalty or interest, or both, for late payments, provided that the penalty does not

exceed ten per cent of the amount of tax due, and the rate at which interest accrues does not exceed the rate per annum prescribed in section 5703.47 of the Revised Code.

~~As used in this division, "eligible county" means a county in which a county agricultural society or independent agricultural society is organized under section 1711.01 or 1711.02 of the Revised Code, provided the agricultural society owns a facility or site in the county at which an annual harness horse race is conducted where one-day attendance equals at least forty thousand attendees.~~

~~(M)~~ (U) As used in ~~this~~ division (U) of this section, "eligible county" means a county in which a tax is levied under division (A) of this section at a rate of three per cent and whose territory includes a part of Lake Erie the shoreline of which represents at least fifty per cent of the linear length of the county's border with other counties of this state.

The board of county commissioners of an eligible county that has entered into an agreement with a port authority in the county under section 4582.56 of the Revised Code may levy an additional lodging tax on transactions by which lodging by a hotel is or is to be furnished to transient guests for the purpose of financing lakeshore improvement projects constructed or financed by the port authority under that section. The resolution levying the tax shall specify the purpose of the tax, the rate of the tax, which shall not exceed two per cent, and the number of years the tax will be levied or that it will be levied for a continuing period of time. The tax shall be administered pursuant to the regulations adopted by the board under division (A) of this section, except that all the proceeds of the tax levied under this division shall be pledged to the payment of the costs, including debt charges, of lakeshore improvements undertaken by a port authority pursuant to the agreement under section 4582.56 of the Revised Code. No revenue from the tax may be used to pay the current expenses of the port authority.

A resolution levying a tax under ~~this~~ division (U) of this section is subject to referendum under sections 305.31 to 305.41 and 305.99 of the Revised Code.

~~(N)(1)(a)~~ (V)(1) As used in division (V) of this section:

(a) "Tourism development district" means a district designated by a municipal corporation under section 715.014 of the Revised Code or by a township under section 503.56 of the Revised Code.

(b) "Lodging tax" means a tax levied pursuant to this section or section 5739.08 of the Revised Code.

(c) "Tourism development district lodging tax proceeds" means all proceeds of a lodging tax derived from transactions by which lodging by a hotel located in a tourism development district is or is to be provided to transient guests.

(d) "Eligible county" has the same meaning as in section 307.678 of the Revised Code.

(2)(a) Notwithstanding division (A) of this section, the board of county commissioners, board of township trustees, or legislative authority of any county, township, or municipal corporation that levies a lodging tax on September 29, 2017, and in which any part of a tourism development district is located on or after that date shall amend the ordinance or resolution levying the tax to require either of the following:

(i) In the case of a tax levied by a county, that all tourism development district lodging tax proceeds from that tax be used exclusively to foster and develop tourism in the tourism development

district;

(ii) In the case of a tax levied by a township or municipal corporation, that all tourism development district lodging tax proceeds from that tax be used exclusively to foster and develop tourism in the tourism development district.

(b) Notwithstanding division (A) of this section, any ordinance or resolution levying a lodging tax adopted on or after September 29, 2017, by a county, township, or municipal corporation in which any part of a tourism development district is located on or after that date shall require that all tourism development district lodging tax proceeds from that tax be used exclusively to foster and develop tourism in the tourism development district.

(c) A county shall not use any of the proceeds described in division ~~(N)(1)(a)(i)~~ (V)(2)(a)(i) or ~~(N)(1)(b)~~ (V)(2)(b) of this section unless the convention and visitors' bureau operating within the county approves the manner in which such proceeds are used to foster and develop tourism in the tourism development district. Upon obtaining such approval, the county may pay such proceeds to the bureau to use for the agreed-upon purpose.

A municipal corporation or township shall not use any of the proceeds described in division ~~(N)(1)(a)(ii)~~ (V)(2)(a)(ii) or ~~(N)(1)(b)~~ (V)(2)(b) of this section unless the convention and visitors' bureau operating within the municipal corporation or township approves the manner in which such proceeds are used to foster and develop tourism in the tourism development district. Upon obtaining such approval, the municipal corporation or township may pay such proceeds to the bureau to use for the agreed-upon purpose.

~~(2)(a)~~ (3)(a) Notwithstanding division (A) of this section, the board of county commissioners of an eligible county that levies a lodging tax on March 23, 2018, may amend the resolution levying that tax to require that all or a portion of the proceeds of that tax otherwise required to be spent solely to make contributions to the convention and visitors' bureau operating within the county shall be used to foster and develop tourism in a tourism development district.

(b) Notwithstanding division (A) of this section, the board of county commissioners of an eligible county that adopts a resolution levying a lodging tax on or after March 23, 2018, may require that all or a portion of the proceeds of that tax otherwise required to be spent solely to make contributions to the convention and visitors' bureau operating within the county pursuant to division (A) of this section shall be used to foster and develop tourism in a tourism development district.

(c) A county shall not use any of the proceeds in the manner described in division ~~(N)(2)(a)~~ (V)(3)(a) or (b) of this section unless the convention and visitors' bureau operating within the county approves the manner in which such proceeds are used to foster and develop tourism in the tourism development district. Upon obtaining such approval, the county may pay such proceeds to the bureau to use for the agreed upon purpose.

~~(3) As used in division (N) of this section:~~

~~(a) "Tourism development district" means a district designated by a municipal corporation under section 715.014 of the Revised Code or by a township under section 503.56 of the Revised Code.~~

~~(b) "Lodging tax" means a tax levied pursuant to this section or section 5739.08 of the Revised Code.~~

~~(c) "Tourism development district lodging tax proceeds" means all proceeds of a lodging tax~~

~~derived from transactions by which lodging by a hotel located in a tourism development district is or is to be provided to transient guests.~~

~~(d) "Eligible county" has the same meaning as in section 307.678 of the Revised Code.~~

Sec. 5739.091. (A) For the purposes of a tax levied by a county, township, or municipal corporation under section 5739.08 or 5739.09 of the Revised Code, a board of county commissioners, board of township trustees, or the legislative authority of a municipal corporation may adopt a resolution or ordinance at any time specifying that "hotel," as otherwise defined in section 5739.01 of the Revised Code, includes the following:

(1) Establishments in which fewer than five rooms are used for the accommodation of guests;

(2) Establishments at which rooms are used for the accommodation of guests regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry; and, in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For the purposes of division (A)(2) of this section, two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person.

(B) The resolution or ordinance may apply to a tax imposed pursuant to section 5739.08 or 5739.09 of the Revised Code prior to the adoption of the resolution or ordinance if the resolution or ordinance so states, but the tax shall not apply to transactions by which lodging by such an establishment is provided to transient guests prior to the adoption of the resolution or ordinance.

Sec. 5739.092. (A) Except as provided in division (B) of this section, money collected by a county and distributed under section 5739.09 of the Revised Code to a convention and visitors' bureau in existence as of June 30, 2013, except for any such money pledged, as of that date, to the payment of debt service charges on bonds, notes, securities, or lease agreements, shall be used solely for tourism sales, marketing and promotion, and their associated costs, including operational and administrative costs of the bureau, sales and marketing, and maintenance of the physical bureau structure.

(B) A convention and visitors' bureau that has entered into an agreement under section 307.678 of the Revised Code may use revenue it receives from a tax levied under division (A) of section 5739.09 of the Revised Code as described in division (E) of section 307.678 of the Revised Code.

Sec. 5739.21. (A) One hundred per cent of all money deposited into the state treasury under sections 5739.01 to 5739.31 of the Revised Code that is not required to be distributed as provided in section 5739.102 of the Revised Code or division (B) of this section shall be credited to the general revenue fund.

(B)(1) In any case where any county or transit authority has levied a tax or taxes pursuant to section 5739.021, 5739.023, or 5739.026 of the Revised Code, the tax commissioner shall, within forty-five days after the end of each month, determine and certify to the director of budget and management the amount of the proceeds of such tax or taxes received during that month from billings and assessments, or associated with tax returns or reports filed during that month, to be

returned to the county or transit authority levying the tax or taxes. The amount to be returned to each county and transit authority shall be a fraction of the aggregate amount of money collected with respect to each area in which one or more of such taxes are concurrently in effect with the tax levied by section 5739.02 of the Revised Code. The numerator of the fraction is the rate of the tax levied by the county or transit authority and the denominator of the fraction is the aggregate rate of such taxes applicable to such area. The amount to be returned to each county or transit authority shall be reduced by the amount of any refunds of county or transit authority tax paid pursuant to section 5739.07 of the Revised Code during the same month, or transfers made pursuant to division (B)(2) of section 5703.052 of the Revised Code.

(2) On a periodic basis, using the best information available, the tax commissioner shall distribute any amount of a county or transit authority tax that cannot be distributed under division (B)(1) of this section. Through audit or other means, the commissioner shall attempt to obtain the information necessary to make the distribution as provided under that division and, on receipt of that information, shall make adjustments to distributions previously made under this division.

(3) ~~Beginning July 1, 2008, eight~~ Eight and thirty-three one-hundredths of one per cent of the revenue collected from the tax due under division (A) of section 5739.029 of the Revised Code shall be distributed to the county where the sale of the motor vehicle is situsued under section ~~5739.035~~ 5739.033 of the Revised Code. The amount to be so distributed to the county shall be apportioned on the basis of the rates of taxes the county levies pursuant to sections 5739.021 and 5739.026 of the Revised Code, as applicable, and shall be credited to the funds of the county as provided in divisions (A) and (B) of section 5739.211 of the Revised Code.

(C) The aggregate amount to be returned to any county or transit authority shall be reduced by one per cent, which shall be certified directly to the credit of the local sales tax administrative fund, which is hereby created in the state treasury. For the purpose of determining the amount to be returned to a county and transit authority in which the rate of tax imposed by the transit authority has been reduced under section 5739.028 of the Revised Code, the tax commissioner shall use the respective rates of tax imposed by the county or transit authority that results from the change in the rates authorized under that section.

(D) The director of budget and management shall transfer, from the same funds and in the same proportions specified in division (A) of this section, to the permissive tax distribution fund created by division (B)(1) of section 4301.423 of the Revised Code and to the local sales tax administrative fund, the amounts certified by the tax commissioner. The tax commissioner shall then, on or before the twentieth day of the month in which such certification is made, provide for payment of such respective amounts to the county treasurer and to the fiscal officer of the transit authority levying the tax or taxes. The amount transferred to the local sales tax administrative fund is for use by the tax commissioner in defraying costs incurred in administering such taxes levied by a county or transit authority.

Sec. 5740.02. (A)(1) The state of Ohio shall participate in discussions with other states regarding the development of a streamlined sales and use tax system to reduce the burden and cost for all sellers to collect this state's sales and use taxes.

(2) Subject to division (B) of this section, the state also shall participate in meetings of the implementing states or the governing board of the agreement to review, amend, or administer the

terms of the agreement to simplify and modernize sales and use tax administration that embodies the requirements set forth in section 5740.05 of the Revised Code. For purposes of these meetings, the state shall be represented by three delegates. The tax commissioner or the commissioner's designee shall be the chairperson of the delegation. The other delegates shall be one delegate chosen by the speaker of the house of representatives and one delegate chosen by the president of the senate. In all matters where voting by the member states or the governing board is required to amend the agreement, the chairperson, based on the votes of the majority of the delegation, shall cast this state's vote.

(B) The state shall not participate in the meetings of the implementing states or the governing board referred to in division (A)(2) of this section unless the meetings are conducted in accordance with requirements substantially similar to those described in divisions (C) and (F) of section 121.22 of the Revised Code, as if the participants of the meetings were a public body as defined in that section, except such meetings may be closed during any discussion pertaining to proprietary information of a person if the person so requests, personnel matters, competitive bidding, certification of service providers, or matters substantially similar to those described in ~~divisions~~ division (G)(2), (3), or (5) of section 121.22 of the Revised Code. The state may participate in teleconferences, special meetings, meetings of working groups, committees, or steering committees if they are conducted in accordance with the public participation rules applicable to such meetings, as established by the implementing states entitled to participate in discussions to finalize the agreement, or the governing board.

(C) As used in this section:

(1) "Meetings of the implementing states" means meetings of the entire body of the states that are entitled to participate in discussions to finalize the agreement because they have enacted legislation based on the uniform sales and use tax administration act, approved January 24, 2001, or the simplified sales and use tax administration act, approved January 27, 2001.

(2) "Governing board" means the board that, under the terms of the agreement, is responsible for the administration and operation of the agreement.

Sec. 5743.05. The tax commissioner shall sell all stamps provided for by section 5743.03 of the Revised Code. The stamps shall be sold at their face value, except the commissioner shall, by rule, authorize the sale of stamps to wholesale dealers in this state, or to wholesale dealers outside this state, at a discount of not less than one and eight-tenths per cent or more than ten per cent of their face value, as a commission for affixing and canceling the stamps.

The commissioner, by rule, shall authorize the delivery of stamps to wholesale dealers in this state and to wholesale dealers outside this state on credit. If such a dealer has not been in good credit standing with this state for five consecutive years preceding the purchase, the commissioner shall require the dealer to file with the commissioner a bond to the state in the amount and in the form prescribed by the commissioner, with surety to the satisfaction of the commissioner, conditioned on payment to the treasurer of state or the commissioner within thirty days or the following twenty-third day of June, whichever comes first for stamps delivered within that time. If such a dealer has been in good credit standing with this state for five consecutive years preceding the purchase, the commissioner shall not require that the dealer file such a bond but shall require payment for the stamps within thirty days after purchase of the stamps or the following twenty-third day of June,

whichever comes first. Stamps sold to a dealer not required to file a bond shall be sold at face value. The maximum amount that may be sold on credit to a dealer not required to file a bond shall equal one hundred ten per cent of the dealer's average monthly purchases over the preceding calendar year. The maximum amount shall be adjusted to reflect any changes in the tax rate and may be adjusted, upon application to the commissioner by the dealer, to reflect changes in the business operations of the dealer. The maximum amount shall be applicable to the period between the first day of July to the following twenty-third day of June. Payment by a dealer not required to file a bond shall be remitted by electronic funds transfer as prescribed by section 5743.051 of the Revised Code. If a dealer not required to file a bond fails to make the payment in full within the required payment period, the commissioner shall not thereafter sell stamps to that dealer until the dealer pays the outstanding amount, including penalty and interest on that amount as prescribed in this chapter, and the commissioner thereafter may require the dealer to file a bond until the dealer is restored to good standing. The commissioner shall limit delivery of stamps on credit to the period running from the first day of July of the fiscal year until the twenty-third day of the following June. Any discount allowed as a commission for affixing and canceling stamps shall be allowed with respect to sales of stamps on credit.

The commissioner shall redeem and pay for any destroyed, unused, or spoiled tax stamps at their net value, and shall refund to wholesale dealers the net amount of state and county taxes paid erroneously or paid on cigarettes that have been sold in interstate or foreign commerce or that have become unsalable, and the net amount of county taxes that were paid on cigarettes that have been sold at retail or for retail sale outside a taxing county.

An application for a refund of tax shall be filed with the commissioner, on the form prescribed by the commissioner for that purpose, within three years from the date the tax stamps are destroyed or spoiled, from the date of the erroneous payment, or from the date that cigarettes on which taxes have been paid have been sold in interstate or foreign commerce or have become unsalable.

On the filing of the application, the commissioner shall determine the amount of refund to which the applicant is entitled, payable from receipts of the state tax, and, if applicable, payable from receipts of a county tax. If the amount is <u>not</u> less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

If a refund is granted for payment of an illegal or erroneous assessment issued by the department, the refund shall include interest on the amount of the refund from the date of the overpayment. The interest shall be computed at the rate per annum prescribed by section 5703.47 of the Revised Code.

Sec. 5743.08. Whenever the tax commissioner discovers any cigarettes which are being shipped, or which have been shipped, or transported in violation of section 2927.023 of the Revised Code, or discovers cigarettes, subject to the taxes levied under section 5743.02, 5743.021, 5743.024, or 5743.026 of the Revised Code, and upon which the taxes have not been paid or that are held for sale or distribution in violation of any other provision of this chapter, the commissioner may seize and take possession of such cigarettes, which shall thereupon be forfeited to the state, and the

commissioner, within a reasonable time thereafter shall sell or destroy the forfeited cigarettes. If the commissioner takes ~~possesssion~~ possession of cigarettes seized pursuant to section 3739.11 of the Revised Code, such cigarettes shall be forfeited to the state, and the commissioner shall destroy such cigarettes, except prior to the destruction of any such cigarettes, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes. If the commissioner sells cigarettes under this section, the commissioner shall use proceeds from the sale to pay the costs incurred in the proceedings. Any proceeds remaining after all costs have been paid shall be considered revenue arising from the taxes levied under this chapter. Seizure and sale shall not be deemed to relieve any person from the fine or imprisonment provided for violation of sections 5743.01 to 5743.20 of the Revised Code or from a civil penalty under section 3739.99 of the Revised Code. A sale shall be made where it is most convenient and economical. The tax commissioner may order the destruction of the forfeited cigarettes if the quantity or quality of the cigarettes is not sufficient to warrant their sale.

Sec. 5743.33. Except as provided in section ~~5747.331~~ 5743.331 of the Revised Code, every person who has acquired cigarettes for use, storage, or other consumption subject to the tax levied under section 5743.32, 5743.321, 5743.323, or 5743.324 of the Revised Code, shall, on or before the fifteenth day of the month following receipt of such cigarettes, file with the tax commissioner a return showing the amount of cigarettes acquired, together with remittance of the tax thereon. No such person shall transport within this state, cigarettes that have a wholesale value in excess of three hundred dollars, unless that person has obtained consent to transport the cigarettes from the department of taxation prior to such transportation. Such consent shall not be required if the applicable taxes levied under sections 5743.02, 5743.021, 5743.024, and 5743.026 of the Revised Code have been paid. Application for the consent shall be in the form prescribed by the tax commissioner.

Every person transporting such cigarettes shall possess the consent while transporting or possessing the cigarettes within this state and shall produce the consent upon request of any law enforcement officer or authorized agent of the tax commissioner.

Any person transporting such cigarettes without the consent required by this section, shall be subject to the provisions of this chapter, including the applicable taxes imposed under sections 5743.02, 5743.021, 5743.024, and 5743.026 of the Revised Code.

Sec. 5743.65. No person required by division ~~(B)~~(C) of section 5743.62 or division (B) of section 5743.63 of the Revised Code to file a return with the tax commissioner shall fail to make the return or fail to pay the applicable taxes levied under section 5743.62 or 5743.63 of the Revised Code or fail to pay any lawful assessment issued by the tax commissioner.

Sec. 5745.14. (A) If any of the facts, figures, computations, or attachments required in a taxpayer's report to determine the tax due a municipal corporation must be altered as the result of an adjustment to the taxpayer's federal income tax return, whether the adjustment is initiated by the taxpayer, the internal revenue service, or the tax commissioner, and such alteration affects the taxpayer's tax liability to a municipal corporation, the taxpayer shall file an amended report with the tax commissioner in such form as the commissioner requires. The amended report shall be filed not later than one year after the adjustment has been agreed to or finally determined.

(B) In the case of an underpayment, the amended report shall be accompanied by payment of

an additional tax and interest due and is a report subject to assessment under section 5745.12 of the Revised Code for the purpose of assessing any additional tax due under this division, together with any applicable penalty and interest. It shall not reopen those facts, figures, computations, or attachments from a previously filed report no longer subject to assessment that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

(C) In the case of an overpayment, an application for refund may be filed under section 5745.11 of the Revised Code within the one-year period prescribed for filing the amended report even if it is filed beyond the period prescribed by that section, if it otherwise conforms to the requirements of such section. An application filed under this division shall claim refund of overpayments resulting from alterations to only those facts, figures, computations, or attachments required in the taxpayer's report that are affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return unless it is also filed within the time prescribed by section 5745.11 of the Revised Code. It shall not reopen those facts, figures, computations, or attachments that are not affected, either directly or indirectly, by the adjustment to the taxpayer's federal income tax return.

Sec. 5747.01. Except as otherwise expressly provided or clearly appearing from the context, any term used in this chapter that is not otherwise defined in this section has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes or if not used in a comparable context in those laws, has the same meaning as in section 5733.40 of the Revised Code. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

As used in this chapter:

(A) "Adjusted gross income" or "Ohio adjusted gross income" means federal adjusted gross income, as defined and used in the Internal Revenue Code, adjusted as provided in this section:

(1) Add interest or dividends on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities.

(2) Add interest or dividends on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes.

(3) Deduct interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(4) Deduct disability and survivor's benefits to the extent included in federal adjusted gross income.

(5) Deduct benefits under Title II of the Social Security Act and tier 1 railroad retirement benefits to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code.

(6) ~~In the case of a taxpayer who is a beneficiary of a trust that makes an accumulation distribution as defined in section 665 of the Internal Revenue Code, add, for the beneficiary's taxable years beginning before 2002, the portion, if any, of such distribution that does not exceed the undistributed net income of the trust for the three taxable years preceding the taxable year in which~~

~~the distribution is made to the extent that the portion was not included in the trust's taxable income for any of the trust's taxable years beginning in 2002 or thereafter. "Undistributed net income of a trust" means the taxable income of the trust increased by (a)(i) the additions to adjusted gross income required under division (A) of this section and (ii) the personal exemptions allowed to the trust pursuant to section 642(b) of the Internal Revenue Code, and decreased by (b)(i) the deductions to adjusted gross income required under division (A) of this section, (ii) the amount of federal income taxes attributable to such income, and (iii) the amount of taxable income that has been included in the adjusted gross income of a beneficiary by reason of a prior accumulation distribution. Any undistributed net income included in the adjusted gross income of a beneficiary shall reduce the undistributed net income of the trust commencing with the earliest years of the accumulation period.~~

~~(7)~~ Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal adjusted gross income for the taxable year, had the targeted jobs credit allowed and determined under sections 38, 51, and 52 of the Internal Revenue Code not been in effect.

~~(8)~~ (7) Deduct any interest or interest equivalent on public obligations and purchase obligations to the extent that the interest or interest equivalent is included in federal adjusted gross income.

~~(9)~~ (8) Add any loss or deduct any gain resulting from the sale, exchange, or other disposition of public obligations to the extent that the loss has been deducted or the gain has been included in computing federal adjusted gross income.

~~(10)~~ (9) Deduct or add amounts, as provided under section 5747.70 of the Revised Code, related to contributions to variable college savings program accounts made or tuition units purchased pursuant to Chapter 3334. of the Revised Code.

~~(11)(a)~~ (10)(a) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer paid during the taxable year for medical care insurance and qualified long-term care insurance for the taxpayer, the taxpayer's spouse, and dependents. No deduction for medical care insurance under division ~~(A)(11)(a)~~ (A)(10)(a) of this section shall be allowed either to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the taxpayer's spouse, or to any taxpayer who is entitled to, or on application would be entitled to, benefits under part A of Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. For the purposes of division ~~(A)(11)(a)~~ (A)(10)(a) of this section, "subsidized health plan" means a health plan for which the employer pays any portion of the plan's cost. The deduction allowed under division ~~(A)(11)(a)~~ (A)(10)(a) of this section shall be the net of any related premium refunds, related premium reimbursements, or related insurance premium dividends received during the taxable year.

(b) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, the amount the taxpayer paid during the taxable year, not compensated for by any insurance or otherwise, for medical care of the taxpayer, the taxpayer's spouse, and dependents, to the extent the expenses exceed seven and one-half per cent of the taxpayer's federal adjusted gross income.

(c) ~~Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio~~

~~adjusted gross income, any amount included in federal adjusted gross income under section 105 or not excluded under section 106 of the Internal Revenue Code solely because it relates to an accident and health plan for a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.~~

~~(d)~~ For purposes of division ~~(A)(11)~~ (A)(10) of this section, "medical care" has the meaning given in section 213 of the Internal Revenue Code, subject to the special rules, limitations, and exclusions set forth therein, and "qualified long-term care" has the same meaning given in section 7702B(c) of the Internal Revenue Code. Solely for purposes of ~~divisions (A)(11)(a) and (c)~~ division (A)(10)(a) of this section, "dependent" includes a person who otherwise would be a "qualifying relative" and thus a "dependent" under section 152 of the Internal Revenue Code but for the fact that the person fails to meet the income and support limitations under section 152(d)(1)(B) and (C) of the Internal Revenue Code.

~~(12)(a)~~ (11)(a) Deduct any amount included in federal adjusted gross income solely because the amount represents a reimbursement or refund of expenses that in any year the taxpayer had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable United States department of the treasury regulations. The deduction otherwise allowed under division ~~(A)(12)(a)~~ (A)(11)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio adjusted gross income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount deducted or excluded in computing federal or Ohio adjusted gross income in any taxable year.

~~(13)~~ (12) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year;

(b) It does not otherwise reduce the taxpayer's adjusted gross income for the current or any other taxable year.

~~(14)~~ (13) Deduct an amount equal to the deposits made to, and net investment earnings of, a medical savings account during the taxable year, in accordance with section 3924.66 of the Revised Code. The deduction allowed by division ~~(A)(14)~~ (A)(13) of this section does not apply to medical savings account deposits and earnings otherwise deducted or excluded for the current or any other taxable year from the taxpayer's federal adjusted gross income.

~~(15)(a)~~ (14)(a) Add an amount equal to the funds withdrawn from a medical savings account during the taxable year, and the net investment earnings on those funds, when the funds withdrawn were used for any purpose other than to reimburse an account holder for, or to pay, eligible medical expenses, in accordance with section 3924.66 of the Revised Code;

(b) Add the amounts distributed from a medical savings account under division (A)(2) of section 3924.68 of the Revised Code during the taxable year.

~~(16)~~ (15) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that such amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal adjusted gross income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction of the taxpayer's federal adjusted gross income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

~~(17)~~ (16) Deduct the amount contributed by the taxpayer to an individual development account program established by a county department of job and family services pursuant to sections 329.11 to 329.14 of the Revised Code for the purpose of matching funds deposited by program participants. On request of the tax commissioner, the taxpayer shall provide any information that, in the tax commissioner's opinion, is necessary to establish the amount deducted under division ~~(A)(17)~~ (A)(16) of this section.

~~(18) Beginning in taxable year 2001 but not for any taxable year beginning after December 31, 2005, if the taxpayer is married and files a joint return and the combined federal adjusted gross income of the taxpayer and the taxpayer's spouse for the taxable year does not exceed one hundred thousand dollars, or if the taxpayer is single and has a federal adjusted gross income for the taxable year not exceeding fifty thousand dollars, deduct amounts paid during the taxable year for qualified tuition and fees paid to an eligible institution for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, who is a resident of this state and is enrolled in or attending a program that culminates in a degree or diploma at an eligible institution. The deduction may be claimed only to the extent that qualified tuition and fees are not otherwise deducted or excluded for any taxable year from federal or Ohio adjusted gross income. The deduction may not be claimed for educational expenses for which the taxpayer claims a credit under section 5747.27 of the Revised Code.~~

~~(19) Add any reimbursement received during the taxable year of any amount the taxpayer deducted under division (A)(18) of this section in any previous taxable year to the extent the amount is not otherwise included in Ohio adjusted gross income.~~

~~(20)(a)(i)~~ (17)(a)(i) Subject to divisions ~~(A)(20)(a)(iii)~~(A)(17)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code, including the taxpayer's proportionate or distributive share of the amount of depreciation expense allowed by that subsection to a pass-through entity in which the taxpayer has a direct or indirect ownership interest.

(ii) Subject to divisions ~~(A)(20)(a)(iii)~~(A)(17)(a)(iii), (iv), and (v) of this section, add five-sixths of the amount of qualifying section 179 depreciation expense, including the taxpayer's proportionate or distributive share of the amount of qualifying section 179 depreciation expense allowed to any pass-through entity in which the taxpayer has a direct or indirect ownership interest.

(iii) Subject to division ~~(A)(20)(a)(v)~~ (A)(17)(a)(v) of this section, for taxable years beginning in 2012 or thereafter, if the increase in income taxes withheld by the taxpayer is equal to or greater than ten per cent of income taxes withheld by the taxpayer during the taxpayer's immediately preceding taxable year, "two-thirds" shall be substituted for "five-sixths" for the purpose of divisions ~~(A)(20)(a)(i)~~ (A)(17)(a)(i) and (ii) of this section.

(iv) Subject to division ~~(A)(20)(a)(v)~~ (A)(17)(a)(v) of this section, for taxable years

beginning in 2012 or thereafter, a taxpayer is not required to add an amount under division ~~(A)(20)~~ (A)(17) of this section if the increase in income taxes withheld by the taxpayer and by any pass-through entity in which the taxpayer has a direct or indirect ownership interest is equal to or greater than the sum of (I) the amount of qualifying section 179 depreciation expense and (II) the amount of depreciation expense allowed to the taxpayer by subsection (k) of section 168 of the Internal Revenue Code, and including the taxpayer's proportionate or distributive shares of such amounts allowed to any such pass-through entities.

(v) If a taxpayer directly or indirectly incurs a net operating loss for the taxable year for federal income tax purposes, to the extent such loss resulted from depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code and by qualifying section 179 depreciation expense, "the entire" shall be substituted for "five-sixths of the" for the purpose of divisions ~~(A)(20)(a)(i)~~ (A)(17)(a)(i) and (ii) of this section.

The tax commissioner, under procedures established by the commissioner, may waive the add-backs related to a pass-through entity if the taxpayer owns, directly or indirectly, less than five per cent of the pass-through entity.

(b) Nothing in division ~~(A)(20)~~ (A)(17) of this section shall be construed to adjust or modify the adjusted basis of any asset.

(c) To the extent the add-back required under division ~~(A)(20)(a)~~ (A)(17)(a) of this section is attributable to property generating nonbusiness income or loss allocated under section 5747.20 of the Revised Code, the add-back shall be situsedto the same location as the nonbusiness income or loss generated by the property for the purpose of determining the credit under division (A) of section 5747.05 of the Revised Code. Otherwise, the add-back shall be apportioned, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(d) For the purposes of division ~~(A)(20)(a)(v)~~ (A)(17)(a)(v) of this section, net operating loss carryback and carryforward shall not include the allowance of any net operating loss deduction carryback or carryforward to the taxable year to the extent such loss resulted from depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount.

(e) For the purposes of divisions ~~(A)(20)~~ (A)(17) and ~~(21)~~ (18) of this section:

(i) "Income taxes withheld" means the total amount withheld and remitted under sections 5747.06 and 5747.07 of the Revised Code by an employer during the employer's taxable year.

(ii) "Increase in income taxes withheld" means the amount by which the amount of income taxes withheld by an employer during the employer's current taxable year exceeds the amount of income taxes withheld by that employer during the employer's immediately preceding taxable year.

(iii) "Qualifying section 179 depreciation expense" means the difference between (I) the amount of depreciation expense directly or indirectly allowed to a taxpayer under section 179 of the Internal Revised Code, and (II) the amount of depreciation expense directly or indirectly allowed to the taxpayer under section 179 of the Internal Revenue Code as that section existed on December 31, 2002.

~~(21)(a)~~ (18)(a) If the taxpayer was required to add an amount under division ~~(A)(20)(a)~~ (A)(17)(a) of this section for a taxable year, deduct one of the following:

(i) One-fifth of the amount so added for each of the five succeeding taxable years if the

amount so added was five-sixths of qualifying section 179 depreciation expense or depreciation expense allowed by subsection (k) of section 168 of the Internal Revenue Code;

(ii) One-half of the amount so added for each of the two succeeding taxable years if the amount so added was two-thirds of such depreciation expense;

(iii) One-sixth of the amount so added for each of the six succeeding taxable years if the entire amount of such depreciation expense was so added.

(b) If the amount deducted under division ~~(A)(21)(a)~~ (A)(18)(a) of this section is attributable to an add-back allocated under division ~~(A)(20)(c)~~ (A)(17)(c) of this section, the amount deducted shall be situsedto the same location. Otherwise, the add-back shall be apportioned using the apportionment factors for the taxable year in which the deduction is taken, subject to one or more of the four alternative methods of apportionment enumerated in section 5747.21 of the Revised Code.

(c) No deduction is available under division ~~(A)(21)(a)~~ (A)(18)(a) of this section with regard to any depreciation allowed by section 168(k) of the Internal Revenue Code and by the qualifying section 179 depreciation expense amount to the extent that such depreciation results in or increases a federal net operating loss carryback or carryforward. If no such deduction is available for a taxable year, the taxpayer may carry forward the amount not deducted in such taxable year to the next taxable year and add that amount to any deduction otherwise available under division ~~(A)(21)(a)~~ (A)(18)(a) of this section for that next taxable year. The carryforward of amounts not so deducted shall continue until the entire addition required by division ~~(A)(20)(a)~~ (A)(17)(a) of this section has been deducted.

~~(d) No refund shall be allowed as a result of adjustments made by division (A)(21) of this section.~~

~~(22)~~ (19) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as reimbursement for life insurance premiums under section 5919.31 of the Revised Code.

~~(23)~~ (20) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year as a death benefit paid by the adjutant general under section 5919.33 of the Revised Code.

~~(24)~~ (21) Deduct, to the extent included in federal adjusted gross income and not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year, military pay and allowances received by the taxpayer during the taxable year for active duty service in the United States army, air force, navy, marine corps, or coast guard or reserve components thereof or the national guard. The deduction may not be claimed for military pay and allowances received by the taxpayer while the taxpayer is stationed in this state.

~~(25)~~ (22) Deduct, to the extent not otherwise allowable as a deduction or exclusion in computing federal or Ohio adjusted gross income for the taxable year and not otherwise compensated for by any other source, the amount of qualified organ donation expenses incurred by the taxpayer during the taxable year, not to exceed ten thousand dollars. A taxpayer may deduct qualified organ donation expenses only once for all taxable years beginning with taxable years beginning in 2007.

For the purposes of division ~~(A)(25)~~ (A)(22) of this section:

(a) "Human organ" means all or any portion of a human liver, pancreas, kidney, intestine, or lung, and any portion of human bone marrow.

(b) "Qualified organ donation expenses" means travel expenses, lodging expenses, and wages and salary forgone by a taxpayer in connection with the taxpayer's donation, while living, of one or more of the taxpayer's human organs to another human being.

~~(26)~~ (23) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, amounts received by the taxpayer as retired personnel pay for service in the uniformed services or reserve components thereof, or the national guard, or received by the surviving spouse or former spouse of such a taxpayer under the survivor benefit plan on account of such a taxpayer's death. If the taxpayer receives income on account of retirement paid under the federal civil service retirement system or federal employees retirement system, or under any successor retirement program enacted by the congress of the United States that is established and maintained for retired employees of the United States government, and such retirement income is based, in whole or in part, on credit for the taxpayer's uniformed service, the deduction allowed under this division shall include only that portion of such retirement income that is attributable to the taxpayer's uniformed service, to the extent that portion of such retirement income is otherwise included in federal adjusted gross income and is not otherwise deducted under this section. Any amount deducted under division ~~(A)(26)~~ (A)(23) of this section is not included in a taxpayer's adjusted gross income for the purposes of section 5747.055 of the Revised Code. No amount may be deducted under division ~~(A)(26)~~ (A)(23) of this section on the basis of which a credit was claimed under section 5747.055 of the Revised Code.

~~(27)~~ (24) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received during the taxable year from the military injury relief fund created in section 5902.05 of the Revised Code.

~~(28)~~ (25) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the amount the taxpayer received as a veterans bonus during the taxable year from the Ohio department of veterans services as authorized by Section 2r of Article VIII, Ohio Constitution.

~~(29)~~ (26) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, any income derived from a transfer agreement or from the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

~~(30)~~ (27) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, Ohio college opportunity or federal Pell grant amounts received by the taxpayer or the taxpayer's spouse or dependent pursuant to section 3333.122 of the Revised Code or 20 U.S.C. 1070a, et seq., and used to pay room or board furnished by the educational institution for which the grant was awarded at the institution's facilities, including meal plans administered by the institution. For the purposes of this division, receipt of a grant includes the distribution of a grant directly to an educational institution and the crediting of the grant to the enrollee's account with the institution.

~~(31)~~ (28) Deduct from the portion of an individual's federal adjusted gross income that is business income, to the extent not otherwise deducted or excluded in computing federal adjusted gross income for the taxable year, one hundred twenty-five thousand dollars for each spouse if spouses file separate returns under section 5747.08 of the Revised Code or two hundred fifty thousand dollars for all other individuals.

~~(32)~~ (29) Deduct, as provided under section 5747.78 of the Revised Code, contributions to ABLE savings accounts made in accordance with sections 113.50 to 113.56 of the Revised Code.

~~(33)(a)~~ (30)(a) Deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income during the taxable year, all of the following:

(i) Compensation paid to a qualifying employee described in division (A)(14)(a) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state during a disaster response period pursuant to a qualifying solicitation received by the employee's employer;

(ii) Compensation paid to a qualifying employee described in division (A)(14)(b) of section 5703.94 of the Revised Code to the extent such compensation is for disaster work conducted in this state by the employee during the disaster response period on critical infrastructure owned or used by the employee's employer;

(iii) Income received by an out-of-state disaster business for disaster work conducted in this state during a disaster response period, or, if the out-of-state disaster business is a pass-through entity, a taxpayer's distributive share of the pass-through entity's income from the business conducting disaster work in this state during a disaster response period, if, in either case, the disaster work is conducted pursuant to a qualifying solicitation received by the business.

(b) All terms used in division ~~(A)(33)~~ (A)(30) of this section have the same meanings as in section 5703.94 of the Revised Code.

~~(34)~~ (31) For a taxpayer who is a qualifying Ohio educator, deduct, to the extent not otherwise deducted or excluded in computing federal or Ohio adjusted gross income for the taxable year, the lesser of two hundred fifty dollars or the amount of expenses described in subsections (a)(2)(D)(i) and (ii) of section 62 of the Internal Revenue Code paid or incurred by the taxpayer during the taxpayer's taxable year in excess of the amount the taxpayer is authorized to deduct for that taxable year under subsection (a)(2)(D) of that section.

(B) "Business income" means income, including gain or loss, arising from transactions, activities, and sources in the regular course of a trade or business and includes income, gain, or loss from real property, tangible property, and intangible property if the acquisition, rental, management, and disposition of the property constitute integral parts of the regular course of a trade or business operation. "Business income" includes income, including gain or loss, from a partial or complete liquidation of a business, including, but not limited to, gain or loss from the sale or other disposition of goodwill.

(C) "Nonbusiness income" means all income other than business income and may include, but is not limited to, compensation, rents and royalties from real or tangible personal property, capital gains, interest, dividends and distributions, patent or copyright royalties, or lottery winnings, prizes, and awards.

(D) "Compensation" means any form of remuneration paid to an employee for personal services.

(E) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any other person acting in any fiduciary capacity for any individual, trust, or estate.

(F) "Fiscal year" means an accounting period of twelve months ending on the last day of any month other than December.

(G) "Individual" means any natural person.

(H) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(I) "Resident" means any of the following~~, provided that division (I)(3) of this section applies only to taxable years of a trust beginning in 2002 or thereafter~~:

(1) An individual who is domiciled in this state, subject to section 5747.24 of the Revised Code;

(2) The estate of a decedent who at the time of death was domiciled in this state. The domicile tests of section 5747.24 of the Revised Code are not controlling for purposes of division (I)(2) of this section.

(3) A trust that, in whole or part, resides in this state. If only part of a trust resides in this state, the trust is a resident only with respect to that part.

For the purposes of division (I)(3) of this section:

(a) A trust resides in this state for the trust's current taxable year to the extent, as described in division (I)(3)(d) of this section, that the trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred, or caused to be transferred, directly or indirectly, to the trust by any of the following:

(i) A person, a court, or a governmental entity or instrumentality on account of the death of a decedent, but only if the trust is described in division (I)(3)(e)(i) or (ii) of this section;

(ii) A person who was domiciled in this state for the purposes of this chapter when the person directly or indirectly transferred assets to an irrevocable trust, but only if at least one of the trust's qualifying beneficiaries is domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year;

(iii) A person who was domiciled in this state for the purposes of this chapter when the trust document or instrument or part of the trust document or instrument became irrevocable, but only if at least one of the trust's qualifying beneficiaries is a resident domiciled in this state for the purposes of this chapter during all or some portion of the trust's current taxable year. If a trust document or instrument became irrevocable upon the death of a person who at the time of death was domiciled in this state for purposes of this chapter, that person is a person described in division (I)(3)(a)(iii) of this section.

(b) A trust is irrevocable to the extent that the transferor is not considered to be the owner of the net assets of the trust under sections 671 to 678 of the Internal Revenue Code.

(c) With respect to a trust other than a charitable lead trust, "qualifying beneficiary" has the same meaning as "potential current beneficiary" as defined in section 1361(e)(2) of the Internal Revenue Code, and with respect to a charitable lead trust "qualifying beneficiary" is any current, future, or contingent beneficiary, but with respect to any trust "qualifying beneficiary" excludes a person or a governmental entity or instrumentality to any of which a contribution would qualify for the charitable deduction under section 170 of the Internal Revenue Code.

(d) For the purposes of division (I)(3)(a) of this section, the extent to which a trust consists directly or indirectly, in whole or in part, of assets, net of any related liabilities, that were transferred directly or indirectly, in whole or part, to the trust by any of the sources enumerated in that division shall be ascertained by multiplying the fair market value of the trust's assets, net of related liabilities,

by the qualifying ratio, which shall be computed as follows:

(i) The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the qualifying ratio is the fair market value of all the trust's assets at that time, net of any related liabilities.

(ii) Each subsequent time the trust receives assets, a revised qualifying ratio shall be computed. The numerator of the revised qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer, net of any related liabilities, multiplied by the qualifying ratio last computed without regard to the subsequent transfer, and (2) the fair market value of the subsequently transferred assets at the time transferred, net of any related liabilities, from sources enumerated in division (I)(3)(a) of this section. The denominator of the revised qualifying ratio is the fair market value of all the trust's assets immediately after the subsequent transfer, net of any related liabilities.

(iii) Whether a transfer to the trust is by or from any of the sources enumerated in division (I)(3)(a) of this section shall be ascertained without regard to the domicile of the trust's beneficiaries.

(e) For the purposes of division (I)(3)(a)(i) of this section:

(i) A trust is described in division (I)(3)(e)(i) of this section if the trust is a testamentary trust and the testator of that testamentary trust was domiciled in this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(ii) A trust is described in division (I)(3)(e)(ii) of this section if the transfer is a qualifying transfer described in any of divisions (I)(3)(f)(i) to (vi) of this section, the trust is an irrevocable inter vivos trust, and at least one of the trust's qualifying beneficiaries is domiciled in this state for purposes of this chapter during all or some portion of the trust's current taxable year.

(f) For the purposes of division (I)(3)(e)(ii) of this section, a "qualifying transfer" is a transfer of assets, net of any related liabilities, directly or indirectly to a trust, if the transfer is described in any of the following:

(i) The transfer is made to a trust, created by the decedent before the decedent's death and while the decedent was domiciled in this state for the purposes of this chapter, and, prior to the death of the decedent, the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(ii) The transfer is made to a trust to which the decedent, prior to the decedent's death, had directly or indirectly transferred assets, net of any related liabilities, while the decedent was domiciled in this state for the purposes of this chapter, and prior to the death of the decedent the trust became irrevocable while the decedent was domiciled in this state for the purposes of this chapter.

(iii) The transfer is made on account of a contractual relationship existing directly or indirectly between the transferor and either the decedent or the estate of the decedent at any time prior to the date of the decedent's death, and the decedent was domiciled in this state at the time of death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(iv) The transfer is made to a trust on account of a contractual relationship existing directly or indirectly between the transferor and another person who at the time of the decedent's death was domiciled in this state for purposes of this chapter.

(v) The transfer is made to a trust on account of the will of a testator who was domiciled in

this state at the time of the testator's death for purposes of the taxes levied under Chapter 5731. of the Revised Code.

(vi) The transfer is made to a trust created by or caused to be created by a court, and the trust was directly or indirectly created in connection with or as a result of the death of an individual who, for purposes of the taxes levied under Chapter 5731. of the Revised Code, was domiciled in this state at the time of the individual's death.

(g) The tax commissioner may adopt rules to ascertain the part of a trust residing in this state.

(J) "Nonresident" means an individual or estate that is not a resident. An individual who is a resident for only part of a taxable year is a nonresident for the remainder of that taxable year.

(K) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(L) "Return" means the notifications and reports required to be filed pursuant to this chapter for the purpose of reporting the tax due and includes declarations of estimated tax when so required.

(M) "Taxable year" means the calendar year or the taxpayer's fiscal year ending during the calendar year, or fractional part thereof, upon which the adjusted gross income is calculated pursuant to this chapter.

(N) "Taxpayer" means any person subject to the tax imposed by section 5747.02 of the Revised Code or any pass-through entity that makes the election under division (D) of section 5747.08 of the Revised Code.

(O) "Dependents" means one of the following:

(1) For taxable years beginning on or after January 1, 2018, and before January 1, 2026, dependents as defined in the Internal Revenue Code;

(2) For all other taxable years, dependents as defined in the Internal Revenue Code and as claimed in the taxpayer's federal income tax return for the taxable year or which the taxpayer would have been permitted to claim had the taxpayer filed a federal income tax return.

(P) "Principal county of employment" means, in the case of a nonresident, the county within the state in which a taxpayer performs services for an employer or, if those services are performed in more than one county, the county in which the major portion of the services are performed.

(Q) As used in sections 5747.50 to 5747.55 of the Revised Code:

(1) "Subdivision" means any county, municipal corporation, park district, or township.

(2) "Essential local government purposes" includes all functions that any subdivision is required by general law to exercise, including like functions that are exercised under a charter adopted pursuant to the Ohio Constitution.

(R) "Overpayment" means any amount already paid that exceeds the figure determined to be the correct amount of the tax.

(S) "Taxable income" or "Ohio taxable income" applies only to estates and trusts, and means federal taxable income, as defined and used in the Internal Revenue Code, adjusted as follows:

(1) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations or securities of any state or of any political subdivision or authority of any state, other than this state and its subdivisions and authorities, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section:

(a) The net amount is not attributable to the S portion of an electing small business trust and

has not been distributed to beneficiaries for the taxable year;

(b) The net amount is attributable to the S portion of an electing small business trust for the taxable year.

(2) Add interest or dividends, net of ordinary, necessary, and reasonable expenses not deducted in computing federal taxable income, on obligations of any authority, commission, instrumentality, territory, or possession of the United States to the extent that the interest or dividends are exempt from federal income taxes but not from state income taxes, but only to the extent that such net amount is not otherwise includible in Ohio taxable income and is described in either division (S)(1)(a) or (b) of this section;

(3) Add the amount of personal exemption allowed to the estate pursuant to section 642(b) of the Internal Revenue Code;

(4) Deduct interest or dividends, net of related expenses deducted in computing federal taxable income, on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent that the interest or dividends are exempt from state taxes under the laws of the United States, but only to the extent that such amount is included in federal taxable income and is described in either division (S)(1)(a) or (b) of this section;

(5) Deduct the amount of wages and salaries, if any, not otherwise allowable as a deduction but that would have been allowable as a deduction in computing federal taxable income for the taxable year, had the targeted jobs credit allowed under sections 38, 51, and 52 of the Internal Revenue Code not been in effect, but only to the extent such amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(6) Deduct any interest or interest equivalent, net of related expenses deducted in computing federal taxable income, on public obligations and purchase obligations, but only to the extent that such net amount relates either to income included in federal taxable income for the taxable year or to income of the S portion of an electing small business trust for the taxable year;

(7) Add any loss or deduct any gain resulting from sale, exchange, or other disposition of public obligations to the extent that such loss has been deducted or such gain has been included in computing either federal taxable income or income of the S portion of an electing small business trust for the taxable year;

(8) Except in the case of the final return of an estate, add any amount deducted by the taxpayer on both its Ohio estate tax return pursuant to section 5731.14 of the Revised Code, and on its federal income tax return in determining federal taxable income;

(9)(a) Deduct any amount included in federal taxable income solely because the amount represents a reimbursement or refund of expenses that in a previous year the decedent had deducted as an itemized deduction pursuant to section 63 of the Internal Revenue Code and applicable treasury regulations. The deduction otherwise allowed under division (S)(9)(a) of this section shall be reduced to the extent the reimbursement is attributable to an amount the taxpayer or decedent deducted under this section in any taxable year.

(b) Add any amount not otherwise included in Ohio taxable income for any taxable year to the extent that the amount is attributable to the recovery during the taxable year of any amount

deducted or excluded in computing federal or Ohio taxable income in any taxable year, but only to the extent such amount has not been distributed to beneficiaries for the taxable year.

(10) Deduct any portion of the deduction described in section 1341(a)(2) of the Internal Revenue Code, for repaying previously reported income received under a claim of right, that meets both of the following requirements:

(a) It is allowable for repayment of an item that was included in the taxpayer's taxable income or the decedent's adjusted gross income for a prior taxable year and did not qualify for a credit under division (A) or (B) of section 5747.05 of the Revised Code for that year.

(b) It does not otherwise reduce the taxpayer's taxable income or the decedent's adjusted gross income for the current or any other taxable year.

(11) Add any amount claimed as a credit under section 5747.059 of the Revised Code to the extent that the amount satisfies either of the following:

(a) The amount was deducted or excluded from the computation of the taxpayer's federal taxable income as required to be reported for the taxpayer's taxable year under the Internal Revenue Code;

(b) The amount resulted in a reduction in the taxpayer's federal taxable income as required to be reported for any of the taxpayer's taxable years under the Internal Revenue Code.

(12) Deduct any amount, net of related expenses deducted in computing federal taxable income, that a trust is required to report as farm income on its federal income tax return, but only if the assets of the trust include at least ten acres of land satisfying the definition of "land devoted exclusively to agricultural use" under section 5713.30 of the Revised Code, regardless of whether the land is valued for tax purposes as such land under sections 5713.30 to 5713.38 of the Revised Code. If the trust is a pass-through entity investor, section 5747.231 of the Revised Code applies in ascertaining if the trust is eligible to claim the deduction provided by division (S)(12) of this section in connection with the pass-through entity's farm income.

Except for farm income attributable to the S portion of an electing small business trust, the deduction provided by division (S)(12) of this section is allowed only to the extent that the trust has not distributed such farm income. ~~Division (S)(12) of this section applies only to taxable years of a trust beginning in 2002 or thereafter.~~

(13) Add the net amount of income described in section 641(c) of the Internal Revenue Code to the extent that amount is not included in federal taxable income.

(14) Add or deduct the amount the taxpayer would be required to add or deduct under division ~~(A)(20)~~ (A)(17) or ~~(21)~~ (18) of this section if the taxpayer's Ohio taxable income were computed in the same manner as an individual's Ohio adjusted gross income is computed under this section. ~~In the case of a trust, division (S)(14) of this section applies only to any of the trust's taxable years beginning in 2002 or thereafter.~~

(T) "School district income" and "school district income tax" have the same meanings as in section 5748.01 of the Revised Code.

(U) As used in divisions (A)(7), (A)(8), ~~(A)(9),~~ (S)(6), and (S)(7) of this section, "public obligations," "purchase obligations," and "interest or interest equivalent" have the same meanings as in section 5709.76 of the Revised Code.

(V) "Limited liability company" means any limited liability company formed under Chapter

1705. of the Revised Code or under the laws of any other state.

(W) "Pass-through entity investor" means any person who, during any portion of a taxable year of a pass-through entity, is a partner, member, shareholder, or equity investor in that pass-through entity.

(X) "Banking day" has the same meaning as in section 1304.01 of the Revised Code.

(Y) "Month" means a calendar month.

(Z) "Quarter" means the first three months, the second three months, the third three months, or the last three months of the taxpayer's taxable year.

(AA)(1) ~~"Eligible institution" means a state university or state institution of higher education as defined in section 3345.011 of the Revised Code, or a private, nonprofit college, university, or other post-secondary institution located in this state that possesses a certificate of authorization issued by the chancellor of higher education pursuant to Chapter 1713. of the Revised Code or a certificate of registration issued by the state board of career colleges and schools under Chapter 3332. of the Revised Code.~~

~~(2) "Qualified tuition and fees" means tuition and fees imposed by an eligible institution as a condition of enrollment or attendance, not exceeding two thousand five hundred dollars in each of the individual's first two years of post-secondary education. If the individual is a part-time student, "qualified tuition and fees" includes tuition and fees paid for the academic equivalent of the first two years of post-secondary education during a maximum of five taxable years, not exceeding a total of five thousand dollars. "Qualified tuition and fees" does not include:~~

~~(a) Expenses for any course or activity involving sports, games, or hobbies unless the course or activity is part of the individual's degree or diploma program;~~

~~(b) The cost of books, room and board, student activity fees, athletic fees, insurance expenses, or other expenses unrelated to the individual's academic course of instruction;~~

~~(c) Tuition, fees, or other expenses paid or reimbursed through an employer, scholarship, grant in aid, or other educational benefit program.~~

~~(BB)(1)~~ "Modified business income" means the business income included in a trust's Ohio taxable income after such taxable income is first reduced by the qualifying trust amount, if any.

(2) "Qualifying trust amount" of a trust means capital gains and losses from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, a qualifying investee to the extent included in the trust's Ohio taxable income, but only if the following requirements are satisfied:

(a) The book value of the qualifying investee's physical assets in this state and everywhere, as of the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, is available to the trust.

(b) The requirements of section 5747.011 of the Revised Code are satisfied for the trust's taxable year in which the trust recognizes the gain or loss.

Any gain or loss that is not a qualifying trust amount is modified business income, qualifying investment income, or modified nonbusiness income, as the case may be.

(3) "Modified nonbusiness income" means a trust's Ohio taxable income other than modified business income, other than the qualifying trust amount, and other than qualifying investment income, as defined in section 5747.012 of the Revised Code, to the extent such qualifying investment

income is not otherwise part of modified business income.

(4) "Modified Ohio taxable income" applies only to trusts, and means the sum of the amounts described in divisions ~~(BB)(4)(a)~~ (AA)(4)(a) to (c) of this section:

(a) The fraction, calculated under section 5747.013, and applying section 5747.231 of the Revised Code, multiplied by the sum of the following amounts:

(i) The trust's modified business income;

(ii) The trust's qualifying investment income, as defined in section 5747.012 of the Revised Code, but only to the extent the qualifying investment income does not otherwise constitute modified business income and does not otherwise constitute a qualifying trust amount.

(b) The qualifying trust amount multiplied by a fraction, the numerator of which is the sum of the book value of the qualifying investee's physical assets in this state on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount, and the denominator of which is the sum of the book value of the qualifying investee's total physical assets everywhere on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the day on which the trust recognizes the qualifying trust amount. If, for a taxable year, the trust recognizes a qualifying trust amount with respect to more than one qualifying investee, the amount described in division ~~(BB)(4)(b)~~ (AA)(4)(b) of this section shall equal the sum of the products so computed for each such qualifying investee.

(c)(i) With respect to a trust or portion of a trust that is a resident as ascertained in accordance with division (I)(3)(d) of this section, its modified nonbusiness income.

(ii) With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the amount of its modified nonbusiness income satisfying the descriptions in divisions (B)(2) to (5) of section 5747.20 of the Revised Code, except as otherwise provided in division ~~(BB)(4)(c)(ii)~~ (AA)(4)(c)(ii) of this section. With respect to a trust or portion of a trust that is not a resident as ascertained in accordance with division (I)(3)(d) of this section, the trust's portion of modified nonbusiness income recognized from the sale, exchange, or other disposition of a debt interest in or equity interest in a section 5747.212 entity, as defined in section 5747.212 of the Revised Code, without regard to division (A) of that section, shall not be allocated to this state in accordance with section 5747.20 of the Revised Code but shall be apportioned to this state in accordance with division (B) of section 5747.212 of the Revised Code without regard to division (A) of that section.

If the allocation and apportionment of a trust's income under divisions ~~(BB)(4)(a)~~ (AA)(4)(a) and (c) of this section do not fairly represent the modified Ohio taxable income of the trust in this state, the alternative methods described in division (C) of section 5747.21 of the Revised Code may be applied in the manner and to the same extent provided in that section.

(5)(a) Except as set forth in division ~~(BB)(5)(b)~~ (AA)(5)(b) of this section, "qualifying investee" means a person in which a trust has an equity or ownership interest, or a person or unit of government the debt obligations of either of which are owned by a trust. For the purposes of division ~~(BB)(2)(a)~~ (AA)(2)(a) of this section and for the purpose of computing the fraction described in division ~~(BB)(4)(b)~~ (AA)(4)(b) of this section, all of the following apply:

(i) If the qualifying investee is a member of a qualifying controlled group on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the

trust recognizes the gain or loss, then "qualifying investee" includes all persons in the qualifying controlled group on such last day.

(ii) If the qualifying investee, or if the qualifying investee and any members of the qualifying controlled group of which the qualifying investee is a member on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the gain or loss, separately or cumulatively own, directly or indirectly, on the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount, more than fifty per cent of the equity of a pass-through entity, then the qualifying investee and the other members are deemed to own the proportionate share of the pass-through entity's physical assets which the pass-through entity directly or indirectly owns on the last day of the pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying investee's fiscal or calendar year ending immediately prior to the date on which the trust recognizes the qualifying trust amount.

(iii) For the purposes of division ~~(BB)(5)(a)(iii)~~ (AA)(5)(a)(iii) of this section, "upper level pass-through entity" means a pass-through entity directly or indirectly owning any equity of another pass-through entity, and "lower level pass-through entity" means that other pass-through entity.

An upper level pass-through entity, whether or not it is also a qualifying investee, is deemed to own, on the last day of the upper level pass-through entity's calendar or fiscal year, the proportionate share of the lower level pass-through entity's physical assets that the lower level pass-through entity directly or indirectly owns on the last day of the lower level pass-through entity's calendar or fiscal year ending within or with the last day of the upper level pass-through entity's fiscal or calendar year. If the upper level pass-through entity directly and indirectly owns less than fifty per cent of the equity of the lower level pass-through entity on each day of the upper level pass-through entity's calendar or fiscal year in which or with which ends the calendar or fiscal year of the lower level pass-through entity and if, based upon clear and convincing evidence, complete information about the location and cost of the physical assets of the lower pass-through entity is not available to the upper level pass-through entity, then solely for purposes of ascertaining if a gain or loss constitutes a qualifying trust amount, the upper level pass-through entity shall be deemed as owning no equity of the lower level pass-through entity for each day during the upper level pass-through entity's calendar or fiscal year in which or with which ends the lower level pass-through entity's calendar or fiscal year. Nothing in division ~~(BB)(5)(a)(iii)~~ (AA)(5)(a)(iii) of this section shall be construed to provide for any deduction or exclusion in computing any trust's Ohio taxable income.

(b) With respect to a trust that is not a resident for the taxable year and with respect to a part of a trust that is not a resident for the taxable year, "qualifying investee" for that taxable year does not include a C corporation if both of the following apply:

(i) During the taxable year the trust or part of the trust recognizes a gain or loss from the sale, exchange, or other disposition of equity or ownership interests in, or debt obligations of, the C corporation.

(ii) Such gain or loss constitutes nonbusiness income.

(6) "Available" means information is such that a person is able to learn of the information by the due date plus extensions, if any, for filing the return for the taxable year in which the trust recognizes the gain or loss.

~~(CC)~~ (BB) "Qualifying controlled group" has the same meaning as in section 5733.04 of the Revised Code.

~~(DD)~~ (CC) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

~~(EE)(1)~~ (DD)(1) For the purposes of division ~~(EE)~~ (DD) of this section:

(a) "Qualifying person" means any person other than a qualifying corporation.

(b) "Qualifying corporation" means any person classified for federal income tax purposes as an association taxable as a corporation, except either of the following:

(i) A corporation that has made an election under subchapter S, chapter one, subtitle A, of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year;

(ii) A subsidiary that is wholly owned by any corporation that has made an election under subchapter S, chapter one, subtitle A of the Internal Revenue Code for its taxable year ending within, or on the last day of, the investor's taxable year.

(2) For the purposes of this chapter, unless expressly stated otherwise, no qualifying person indirectly owns any asset directly or indirectly owned by any qualifying corporation.

~~(FF)~~ (EE) For purposes of this chapter and Chapter 5751. of the Revised Code:

(1) "Trust" does not include a qualified pre-income tax trust.

(2) A "qualified pre-income tax trust" is any pre-income tax trust that makes a qualifying pre-income tax trust election as described in division ~~(FF)(3)~~ (EE)(3) of this section.

(3) A "qualifying pre-income tax trust election" is an election by a pre-income tax trust to subject to the tax imposed by section 5751.02 of the Revised Code the pre-income tax trust and all pass-through entities of which the trust owns or controls, directly, indirectly, or constructively through related interests, five per cent or more of the ownership or equity interests. The trustee shall notify the tax commissioner in writing of the election on or before April 15, 2006. The election, if timely made, shall be effective on and after January 1, 2006, and shall apply for all tax periods and tax years until revoked by the trustee of the trust.

(4) A "pre-income tax trust" is a trust that satisfies all of the following requirements:

(a) The document or instrument creating the trust was executed by the grantor before January 1, 1972;

(b) The trust became irrevocable upon the creation of the trust; and

(c) The grantor was domiciled in this state at the time the trust was created.

~~(GG)~~ (FF) "Uniformed services" has the same meaning as in 10 U.S.C. 101.

~~(HH)~~ (GG) "Taxable business income" means the amount by which an individual's business income that is included in federal adjusted gross income exceeds the amount of business income the individual is authorized to deduct under division (A)(31) of this section for the taxable year.

~~(II)~~ (HH) "Employer" does not include a franchisor with respect to the franchisor's relationship with a franchisee or an employee of a franchisee, unless the franchisor agrees to assume that role in writing or a court of competent jurisdiction determines that the franchisor exercises a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademark, brand, or both. For purposes of this division, "franchisor" and "franchisee" have the same meanings as in 16 C.F.R.

436.1.

~~(JJ)~~ (II) "Modified adjusted gross income" means Ohio adjusted gross income plus any amount deducted under division ~~(A)(31)~~ (A)(28) of this section for the taxable year.

~~(KK)~~ (JJ) "Qualifying Ohio educator" means an individual who, for a taxable year, qualifies as an eligible educator, as that term is defined in section 62 of the Internal Revenue Code, and who holds a certificate, license, or permit described in Chapter 3319. or section 3301.071 of the Revised Code.

Sec. 5747.011. (A) As used in this section:

(1) "Qualifying closely-held C corporation" means a person classified for federal income tax purposes as an association taxed as a corporation and that has more than fifty per cent of the value of its outstanding stock or equity owned, directly or indirectly, by or for not more than five qualifying persons. For the purposes of this division, the ownership of stock shall be determined under the rules set forth in section 544 of the Internal Revenue Code.

(2) "Qualifying person" means an individual; an organization described in section 401(a), 501(c)(17), or 509(a) of the Internal Revenue Code; or a portion of a trust permanently set aside or to be used exclusively for the purposes described in section 642(c) of the Internal Revenue Code or a corresponding provision of a prior federal income tax law.

(3) "Qualifying limited liability company" means a limited liability company that is not classified for federal income tax purposes as an association taxed as a corporation.

(4) "Ownership interest" means the equity or ownership interest in, or debt obligation of, a "qualifying investee" as defined in section 5747.01 of the Revised Code.

(5) "Qualifying individual beneficiary" has the same meaning as qualifying beneficiary as used in division (I)(3)(c) of section 5747.01 of the Revised Code, but is limited to individuals.

(6) "Family" of an individual means only the individual's spouse; the individual's ancestors, limited to the individual's parents, grandparents, and great grandparents; the siblings of such ancestors, whether by the whole or half blood or by legal adoption; the lineal descendants of such ancestors and siblings; persons legally adopted by such ancestors or by such siblings; and the spouses of such ancestors, siblings, legally adopted persons, and lineal descendants.

(B) The requirements of this division apply for purposes of division ~~(BB)~~(AA)(2)(b) of section 5747.01 of the Revised Code and for the purposes of division (D) of section 5747.012 of the Revised Code. Gain or loss included in a trust's Ohio taxable income is not a qualifying trust amount unless the trust's ownership interest in the qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee at any time during the ten-year period ending on the last day of the trust's taxable year in which the sale, exchange, or other disposition occurs. Nothing in this section negates the requirements in division ~~(BB)~~(AA)(2) of section 5747.01 of the Revised Code.

For the purpose of ascertaining whether the trust's ownership interest in a qualifying investee is at least five per cent of the total outstanding ownership interests in such qualifying investee, the following apply:

(1) On each day, an ownership interest owned, directly or indirectly, by or for a qualifying closely-held C corporation, an S corporation, a partnership other than a publicly traded partnership, a qualifying limited liability company, an estate, or a trust that is irrevocable as defined in division (I)

(3)(b) of section 5747.01 of the Revised Code is considered as being owned proportionately on the same day by the equity investors of such qualifying closely-held C corporation, S corporation, partnership, or qualifying limited liability company, or by the beneficiaries of such estate or trust, as the case may be. For the purposes of division (B)(1) of this section, a beneficiary's proportionate share of an ownership interest held by a trust shall be ascertained in accordance with section 544(a)(1) of the Internal Revenue Code.

(2) On each day, a trust, hereinafter referred to as the first trust, is considered as owning any ownership interest owned, directly or indirectly, by or for another trust, hereinafter referred to as the second trust, if on the same day the second trust has at least one individual trustee who is either (a) a trustee of the first trust, or (b) a member of a family that includes at least one of the trustees of the first trust.

(3) On each day, a trust, hereinafter referred to as the first trust, is considered as owning any ownership interest owned, directly or indirectly, by or for another trust, hereinafter referred to as the second trust, if on the same day the second trust has at least one qualifying individual beneficiary who is either (a) a qualifying individual beneficiary of the first trust or (b) a member of a family which includes a qualifying individual beneficiary of the first trust.

(4) An ownership interest constructively owned by a person by reason of the application of division (B)(1) of this section shall, for the purpose of applying divisions (B)(1) to (3) of this section, be treated as actually owned by that person.

(5) An ownership interest constructively owned by a trust by reason of the application of division (B)(2) or (3) of this section shall not be treated as actually owned by that trust for purposes of applying divisions (B)(1) to (3) of this section.

(6) If an ownership interest may be considered as owned by a trust under division (B)(1) or (2) of this section, the ownership interest shall be considered owned by that trust under division (B)(2) of this section.

(7) If an ownership interest may be considered as owned by a trust under division (B)(1) or (3) of this section, the ownership interest shall be considered owned by that trust under division (B)(3) of this section.

Sec. 5747.012. This section applies for the purposes of divisions ~~(BB)~~(AA)(3) and ~~(BB)~~(4)(a)(ii) of section 5747.01 of the Revised Code.

(A) As used in this section:

(1)(a) Except as set forth in division (A)(1)(b) of this section, "qualifying investment income" means the portion of a qualifying investment pass-through entity's net income attributable to transaction fees in connection with the acquisition, ownership, or disposition of intangible property; loan fees; financing fees; consent fees; waiver fees; application fees; net management fees; dividend income; interest income; net capital gains from the sale or exchange or other disposition of intangible property; and all types and classifications of income attributable to distributive shares of income from other pass-through entities.

(b)(i) Notwithstanding division (A)(1)(a) of this section, "qualifying investment income" does not include any part of the qualifying investment pass-through entity's net capital gain which, after the application of section 5747.231 of the Revised Code with respect to a trust, would also constitute a qualifying trust amount.

(ii) Notwithstanding division (A)(1)(a) of this section, "qualifying investment income" does not include any part of the qualifying investment pass-through entity's net income attributable to the portion of a distributive share of income directly or indirectly from another pass-through entity to the extent such portion constitutes the other pass-through entity's net capital gain which, after the application of section 5747.231 of the Revised Code with respect to a trust, would also constitute a qualifying trust amount.

(2) "Qualifying investment pass-through entity" means an investment pass-through entity, as defined in section 5733.401 of the Revised Code, subject to the following qualifications:

(a) "Forty per cent" shall be substituted for "ninety per cent" wherever "ninety per cent" appears in section 5733.401 of the Revised Code.

(b) The pass-through entity must have been formed or organized as an entity prior to June 5, 2002, and must exist as a pass-through entity for all of the taxable year of the trust.

(c) The qualifying section 5747.012 trust or related persons to the qualifying section 5747.012 trust must directly or indirectly own at least five per cent of the equity of the investment pass-through entity each day of the entity's fiscal or calendar year ending within or with the last day of the qualifying section 5747.012 trust's taxable year;

(d) During the investment pass-through entity's calendar or fiscal year ending within or with the last day of the qualifying section 5747.012 trust's taxable year, the qualifying section 5747.012 trust or related persons of or to the qualifying section 5747.012 trust must, on each day of the investment pass-through entity's year, own directly, or own through equity investments in other pass-through entities, more than sixty per cent of the equity of the investment pass-through entity.

(B) "Qualifying section 5747.012 trust" means a trust satisfying one of the following:

(1) The trust was created prior to, and was irrevocable on, June 5, 2002; or

(2) If the trust was created after June 4, 2002, or if the trust became irrevocable after June 4, 2002, then at least eighty per cent of the assets transferred to the trust must have been previously owned by related persons to the trust or by a trust created prior to June 5, 2002, under which the creator did not retain the power to change beneficiaries, amend the trust, or revoke the trust. For purposes of division (B)(2) of this section, the power to substitute property of equal value shall not be considered to be a power to change beneficiaries, amend the trust, or revoke the trust.

(C) For the purposes of this section, "related persons" means the family of a qualifying individual beneficiary, as defined in division (A)(5) of section 5747.011 of the Revised Code. For the purposes of this division, "family" has the same meaning as in division (A)(6) of section 5747.011 of the Revised Code.

(D) For the purposes of applying divisions (A)(2)(c), (A)(2)(d), and (B)(2) of this section, the related persons or the qualifying section 5747.012 trust, as the case may be, shall be deemed to own the equity of the investment pass-through entity after the application of division (B) of section 5747.011 of the Revised Code.

(E) "Irrevocable" has the same meaning as in division (I)(3)(b) of section 5747.01 of the Revised Code.

(F) Nothing in this section requires any item of income, gain, or loss not satisfying the definition of qualifying investment income to be treated as modified nonbusiness income. Any item of income, gain, or loss that is not qualifying investment income is modified business income,

modified nonbusiness income, or a qualifying trust amount, as the case may be.

Sec. 5747.013. (A) As used in this section:

(1) "Electric company," "combined company," and "telephone company" have the same meanings as in section 5727.01 of the Revised Code.

(2) "Qualified research" means laboratory research, experimental research, and other similar types of research; research in developing or improving a product; or research in developing or improving the means of producing a product. It does not include market research, consumer surveys, efficiency surveys, management studies, ordinary testing or inspection of material or products for quality control, historical research, or literary research. "Product," as used in this paragraph, does not include services or intangible property.

(B) The fraction to be used in calculating a trust's modified Ohio taxable income under division ~~(BB)~~(AA)(4)(a) of section 5747.01 of the Revised Code shall be determined as follows: The numerator of the fraction is the sum of the following products: the property factor multiplied by twenty, the payroll factor multiplied by twenty, and the sales factor multiplied by sixty. The denominator of the fraction is one hundred, provided that the denominator shall be reduced by twenty if the property factor has a denominator of zero, by twenty if the payroll factor has a denominator of zero, and by sixty if the sales factor has a denominator of zero.

The property, payroll, and sales factors shall be determined as follows:

(1) The property factor is a fraction the numerator of which is the average value of the trust's real and tangible personal property owned or rented and used in the trade or business in this state during the taxable year, and the denominator of which is the average value of all the trust's real and tangible personal property owned or rented and used in the trade or business everywhere during such year. Real and tangible personal property that is owned but leased to a lessee to be used in the lessee's trade or business shall not be included in the property factor of the owner. There shall be excluded from the numerator and denominator of the fraction the original cost of all of the following property within Ohio: property with respect to which a "pollution control facility" certificate has been issued pursuant to section 5709.21 of the Revised Code; property with respect to which an "industrial water pollution control certificate" has been issued pursuant to that section or former section 6111.31 of the Revised Code; and property used exclusively during the taxable year for qualified research.

(a) Property owned by the trust is valued at its original cost. Property rented by the trust is valued at eight times the net annual rental rate. "Net annual rental rate" means the annual rental rate paid by the trust less any annual rental rate received by the trust from subrentals.

(b) The average value of property shall be determined by averaging the values at the beginning and the end of the taxable year, but the tax commissioner may require the averaging of monthly values during the taxable year, if reasonably required to reflect properly the average value of the trust's property.

(2) The payroll factor is a fraction the numerator of which is the total amount paid in this state during the taxable year by the trust for compensation, and the denominator of which is the total compensation paid everywhere by the trust during such year. There shall be excluded from the numerator and the denominator of the payroll factor the total compensation paid in this state to employees who are primarily engaged in qualified research.

(a) Compensation is paid in this state if: (i) the recipient's service is performed entirely within

this state; (ii) the recipient's service is performed both within and without this state, but the service performed without this state is incidental to the recipient's service within this state; or (iii) some of the service is performed within this state and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled, is within this state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the recipient's residence is in this state.

(b) Compensation is paid in this state to any employee of a common or contract motor carrier corporation, who performs the employee's regularly assigned duties on a motor vehicle in more than one state, in the same ratio by which the mileage traveled by such employee within the state bears to the total mileage traveled by such employee everywhere during the taxable year.

(3) The sales factor is a fraction the numerator of which is the total sales in this state by the trust during the taxable year, and the denominator of which is the total sales by the trust everywhere during such year. In determining the numerator and denominator of the fraction, receipts from the sale or other disposal of a capital asset or an asset described in section 1231 of the Internal Revenue Code shall be eliminated. Also, in determining the numerator and denominator of the sales factor, in the case of a trust owning at least eighty per cent of the issued and outstanding common stock of one or more insurance companies or public utilities, except an electric company and a combined company, and, for tax years 2005 and thereafter, a telephone company, or owning at least twenty-five per cent of the issued and outstanding common stock of one or more financial institutions, receipts received by the trust from such insurance companies, utilities, and financial institutions shall be eliminated.

For the purpose of this section and section 5747.08 of the Revised Code, sales of tangible personal property are in this state where such property is received in this state by the purchaser. In the case of delivery of tangible personal property by common carrier or by other means of transportation, the place at which such property is ultimately received after all transportation has been completed shall be considered as the place at which such property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by a purchaser constitutes delivery to the purchaser in this state, and direct delivery outside this state to a person or firm designated by a purchaser does not constitute delivery to the purchaser in this state, regardless of where title passes or other conditions of sale.

Sales, other than sales of tangible personal property, are in this state if either:

(a) The income-producing activity is performed solely in this state; or

(b) The income-producing activity is performed both within and without this state and a greater proportion of the seller's income-producing activity is performed within this state than in any other state, based on costs of performance.

Sec. 5747.02. (A) For the purpose of providing revenue for the support of schools and local government functions, to provide relief to property taxpayers, to provide revenue for the general revenue fund, and to meet the expenses of administering the tax levied by this chapter, there is hereby levied on every individual, trust, and estate residing in or earning or receiving income in this state, on every individual, trust, and estate earning or receiving lottery winnings, prizes, or awards pursuant to Chapter 3770. of the Revised Code, on every individual, trust, and estate earning or receiving winnings on casino gaming, and on every individual, trust, and estate otherwise having nexus with or

in this state under the Constitution of the United States, an annual tax measured as prescribed in divisions (A)(1) to (4) of this section.

(1) In the case of trusts, the tax imposed by this section shall be measured by modified Ohio taxable income under division (D) of this section and levied in the same amount as the tax is imposed on estates as prescribed in division (A)(2) of this section.

(2) In the case of estates, the tax imposed by this section shall be measured by Ohio taxable income. The tax shall be levied at the rate of one and forty-two thousand seven hundred forty-four hundred-thousandths per cent for the first twenty-one thousand seven hundred fifty dollars of such income and, for income in excess of that amount, the tax shall be levied at the same rates prescribed in division (A)(3) of this section for individuals.

(3) In the case of individuals, the tax imposed by this section on income other than taxable business income shall be measured by Ohio adjusted gross income, less taxable business income and less an exemption for the taxpayer, the taxpayer's spouse, and each dependent as provided in section 5747.025 of the Revised Code. If the balance thus obtained is equal to or less than twenty-one thousand seven hundred fifty dollars, no tax shall be imposed on that balance. If the balance thus obtained is greater than twenty-one thousand seven hundred fifty dollars, the tax is hereby levied as follows:

	1	2
A	OHIO ADJUSTED GROSS INCOME LESS TAXABLE BUSINESS INCOME AND EXEMPTIONS (INDIVIDUALS) OR MODIFIED OHIO TAXABLE INCOME (TRUSTS) OR OHIO TAXABLE INCOME (ESTATES)	TAX
B	More than $21,750 but not more than $43,450	$310.47 plus 2.850% of the amount in excess of $21,750
C	More than $43,450 but not more than $86,900	$928.92 plus 3.326% of the amount in excess of $43,450
D	More than $86,900 but not more than $108,700	$2,374.07 plus 3.802% of the amount in excess of $86,900
E	More than $108,700 but not more than	$3,202.91 plus 4.413% of the amount in

	$217,400	excess of $108,700
F	More than $217,400	$7,999.84 plus 4.797% of the amount in excess of $217,400

(4)(a) In the case of individuals, the tax imposed by this section on taxable business income shall equal three per cent of the result obtained by subtracting any amount allowed under division (A)(4)(b) of this section from the individual's taxable business income.

(b) If the exemptions allowed to an individual under division (A)(3) of this section exceed the taxpayer's Ohio adjusted gross income less taxable business income, the excess shall be deducted from taxable business income before computing the tax under division (A)(4)(a) of this section.

(5) Except as otherwise provided in this division, in August of each year, the tax commissioner shall make a new adjustment to the income amounts prescribed in divisions (A)(2) and (3) of this section by multiplying the percentage increase in the gross domestic product deflator computed that year under section 5747.025 of the Revised Code by each of the income amounts resulting from the adjustment under this division in the preceding year, adding the resulting product to the corresponding income amount resulting from the adjustment in the preceding year, and rounding the resulting sum to the nearest multiple of fifty dollars. The tax commissioner also shall recompute each of the tax dollar amounts to the extent necessary to reflect the new adjustment of the income amounts. To recompute the tax dollar amount corresponding to the lowest tax rate in division (A)(3) of this section, the commissioner shall multiply the tax rate prescribed in division (A)(2) of this section by the income amount specified in that division and as adjusted according to this paragraph. The rates of taxation shall not be adjusted.

The adjusted amounts apply to taxable years beginning in the calendar year in which the adjustments are made and to taxable years beginning in each ensuing calendar year until a calendar year in which a new adjustment is made pursuant to this division. The tax commissioner shall not make a new adjustment in any year in which the amount resulting from the adjustment would be less than the amount resulting from the adjustment in the preceding year.

(B) If the director of budget and management makes a certification to the tax commissioner under division (B) of section 131.44 of the Revised Code, the amount of tax as determined under divisions (A)(1) to (3) of this section shall be reduced by the percentage prescribed in that certification for taxable years beginning in the calendar year in which that certification is made.

(C) ~~The levy of this tax on income does not prevent a municipal corporation, a joint economic development zone created under section 715.691, or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Revised Code from levying a tax on income.~~

~~(D) This division applies only to taxable years of a trust beginning in 2002 or thereafter.~~

(1) The tax imposed by this section on a trust shall be computed by multiplying the Ohio modified taxable income of the trust by the rates prescribed by division (A) of this section.

(2) A resident trust may claim a credit against the tax computed under division ~~(D)~~ (C) of this section equal to the lesser of (a) the tax paid to another state or the District of Columbia on the resident trust's modified nonbusiness income, other than the portion of the resident trust's nonbusiness income that is qualifying investment income as defined in section 5747.012 of the

Revised Code, or (b) the effective tax rate, based on modified Ohio taxable income, multiplied by the resident trust's modified nonbusiness income other than the portion of the resident trust's nonbusiness income that is qualifying investment income. The credit applies before any other applicable credits.

(3) ~~The credits authorized by the following sections of the Revised Code do not apply to a trust subject to division (D) of this section: section 5747.022, 5747.05, 5747.054, 5747.055, 5747.27, 5747.37, 5747.66, or 5747.71 of the Revised Code.~~ Any ~~other~~ credit authorized against the tax imposed by this section applies to a trust subject to division ~~(D)~~ (C) of this section ~~that~~ only if the trust otherwise qualifies for ~~such a~~ the credit. To the extent that the trust distributes income for the taxable year for which a credit is available to the trust, the credit shall be shared by the trust and its beneficiaries. The tax commissioner and the trust shall be guided by applicable regulations of the United States treasury regarding the sharing of credits.

~~(E)~~ (D) For the purposes of this section, "trust" means any trust described in Subchapter J of Chapter 1 of the Internal Revenue Code, excluding trusts that are not irrevocable as defined in division (I)(3)(b) of section 5747.01 of the Revised Code and that have no modified Ohio taxable income for the taxable year, charitable remainder trusts, qualified funeral trusts and preneed funeral contract trusts established pursuant to sections 4717.31 to 4717.38 of the Revised Code that are not qualified funeral trusts, endowment and perpetual care trusts, qualified settlement trusts and funds, designated settlement trusts and funds, and trusts exempted from taxation under section 501(a) of the Internal Revenue Code.

~~(F)~~ (E) Nothing in division (A)(3) of this section shall prohibit an individual with an Ohio adjusted gross income, less taxable business income and exemptions, of twenty-one thousand seven hundred fifty dollars or less from filing a return under this chapter to receive a refund of taxes withheld or to claim any refundable credit allowed under this chapter.

Sec. 5747.058. (A) A refundable income tax credit granted by the tax credit authority under section 122.17 or former division (B)(2) or (3) of section 122.171 of the Revised Code, as those divisions existed before the effective date of the amendment of this section by H.B. 64 of the 131st general assembly, September 29, 2015, may be claimed under this chapter, in the order required under section 5747.98 of the Revised Code. For purposes of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid to this state on the first day of the taxable year. The refundable credit shall not be claimed for any taxable years ending with or following the calendar year in which a relocation of employment positions occurs in violation of an agreement entered into under section 122.17 or 122.171 of the Revised Code.

(B) A nonrefundable income tax credit granted by the tax credit authority under division (B) of section 122.171 of the Revised Code may be claimed under this chapter, in the order required under section 5747.98 of the Revised Code.

Sec. 5747.061. (A) As used in this section:

(1) "State agency" means the general assembly, all courts, any department, division, institution, board, commission, authority, bureau, or other instrumentality of the state.

(2) "Political subdivision" means a county, municipal corporation, township, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state.

(3) "Legislative authority" means the board of county commissioners, the legislative

authority of a municipal corporation, the board of township trustees, the board of education, or the board, council, commission, or other governing body of any other political subdivision.

(4) "Fiscal officer" means the county auditor, the treasurer of the municipal corporation, the clerk-treasurer of a village, or the officer who, by virtue of the charter, has the duties of the treasurer or clerk-treasurer, the township fiscal officer, the treasurer of the board of education, or, in the case of any state agency or other subdivision, the officer or person responsible for deducting and withholding from the compensation paid to an employee who is a taxpayer the amount of tax required to be withheld by section 5747.06 of the Revised Code.

(B)(1) The director or other chief administrator of any state agency, in accordance with rules adopted by the department of administrative services, may direct its fiscal officer to deduct and withhold from the compensation paid to an employee who is a resident of a state with which the commissioner has entered into an agreement under division (A)~~(3)~~ (2) of section 5747.05 of the Revised Code, a tax computed in such a manner as to result, as far as practicable, in withholding from the compensation of the employee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under the income tax laws of the state of residence of the employee with respect to the amount of such compensation included in gross income during the calendar year under those laws.

(2) The legislative authority of a political subdivision may adopt a rule, ordinance, or resolution requiring the fiscal officer of the political subdivision to deduct and withhold from the compensation paid to an employee who is a resident of a state with which the tax commissioner has entered into an agreement under division (A)~~(3)~~ (2) of section 5747.05 of the Revised Code, a tax computed in such a manner as to result, as far as practicable, in withholding from the compensation of the employee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under the income tax laws of the state of residence of the employee with respect to the amount of such compensation included in gross income during the calendar year under those laws.

(3) Upon direction of the director or other chief administrator of a state agency, or adoption of a rule, ordinance, or resolution by a political subdivision under this division, the fiscal officer shall obtain from the official responsible for administering the income tax laws of the state of residence of the employee, information necessary to enable the fiscal officer to withhold the proper amount of tax from the compensation of the employee for the calendar year.

(C) A fiscal officer who deducts and withholds tax from the compensation of a nonresident employee shall file a withholding return or other report and pay the full amount of the tax deducted and withheld as required by the income tax laws of the state of residence of the employee.

(D) A fiscal officer who deducts and withholds tax from the compensation of a nonresident employee shall furnish to that employee and to the official who is responsible for administering the income tax laws of the state of residence of the employee, a written statement showing the amount of compensation paid to the employee and the amount deducted and withheld from the compensation of the employee during the calendar year. The statement shall be furnished on or before the last day of January of the succeeding year, except that, with respect to an employee whose employment is terminated, the statement for the calendar year in which the last payment of compensation is made shall be furnished within thirty days from the date the last payment of compensation is made.

Sec. 5747.07. (A) As used in this section:

(1) "Partial weekly withholding period" means a period during which an employer directly, indirectly, or constructively pays compensation to, or credits compensation to the benefit of, an employee, and that consists of a consecutive Saturday, Sunday, Monday, and Tuesday or a consecutive Wednesday, Thursday, and Friday. There are two partial weekly withholding periods each week, except that a partial weekly withholding period cannot extend from one calendar year into the next calendar year; if the first day of January falls on a day other than Saturday or Wednesday, the partial weekly withholding period ends on the thirty-first day of December and there are three partial weekly withholding periods during that week.

(2) "Undeposited taxes" means the taxes an employer is required to deduct and withhold from an employee's compensation pursuant to section 5747.06 of the Revised Code that have not been remitted to the tax commissioner pursuant to this section or to the treasurer of state pursuant to section 5747.072 of the Revised Code.

(3) A "week" begins on Saturday and concludes at the end of the following Friday.

(4) "Client employer," "professional employer organization," "professional employer organization agreement," and "professional employer organization reporting entity" have the same meanings as in section 4125.01 of the Revised Code.

(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows:

(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

(2)~~(a)~~ Except as required by division (B)(1) of this section, an employer ~~described in division (B)(2)(b) of this section~~ whose actual or required payments under this section were at least eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year shall make the payment of undeposited taxes within three banking days after the close of a partial weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code.

~~(b) For amounts required to be deducted and withheld during 1994, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending June 30, 1993. For amounts required to be deducted and withheld during 1995 and each year thereafter, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section were at least eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.~~

(3) Except as required by divisions (B)(1) and (2) of this section, if an employer's actual or required payments were more than two thousand dollars during the twelve-month period ending on

the thirtieth day of June of the preceding calendar year, the employer shall make the payment of undeposited taxes for each month during which they were required to be withheld no later than fifteen days following the last day of that month. The employer shall file the return prescribed by the tax commissioner with the payment.

(4) Except as required by divisions (B)(1), (2), and (3) of this section, an employer shall make the payment of undeposited taxes for each calendar quarter during which they were required to be withheld no later than the last day of the month following the last day of March, June, September, and December each year. The employer shall file the return prescribed by the tax commissioner with the payment.

(C) The return and payment schedules prescribed by divisions (B)(1) and (2) of this section do not apply to the return and payment of undeposited school district income taxes arising from taxes levied pursuant to Chapter 5748. of the Revised Code. Undeposited school district income taxes shall be returned and paid pursuant to divisions (B)(3) and (4) of this section, as applicable.

(D)(1) The requirements of division (B) of this section are met if the amount paid is not less than ninety-five per cent of the actual tax withheld or required to be withheld for the prior quarterly, monthly, or partial weekly withholding period, and the underpayment is not due to willful neglect. Any underpayment of withheld tax shall be paid within thirty days of the date on which the withheld tax was due without regard to division (D)(1) of this section. An employer described in division (B)(1) or (2) of this section shall make the payment by electronic funds transfer under section 5747.072 of the Revised Code.

(2) If the tax commissioner believes that quarterly or monthly payments would result in a delay that might jeopardize the remittance of withholding payments, the commissioner may order that the payments be made weekly, or more frequently if necessary, and the payments shall be made no later than three banking days following the close of the period for which the jeopardy order is made. An order requiring weekly or more frequent payments shall be delivered to the employer personally or by certified mail and remains in effect until the commissioner notifies the employer to the contrary.

(3) If compelling circumstances exist concerning the remittance of undeposited taxes, the commissioner may order the employer to make payments under any of the payment schedules under division (B) of this section. The order shall be delivered to the employer personally or by certified mail and shall remain in effect until the commissioner notifies the employer to the contrary. For purposes of division (D)(3) of this section, "compelling circumstances" exist if either or both of the following are true:

(a) Based upon annualization of payments made or required to be made during the preceding calendar year and during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(b) Based upon annualization of payments made or required to be made during the current calendar year, the employer would be required for the next calendar year to make payments under division (B)(2) of this section.

(E)(1) An employer described in division (B)(1) or (2) of this section shall file, not later than the last day of the month following the end of each calendar quarter, a return covering, but not limited to, both the actual amount deducted and withheld and the amount required to be deducted and

withheld for the tax imposed under section 5747.02 of the Revised Code during each partial weekly withholding period or portion of a partial weekly withholding period during that quarter. The employer shall file the quarterly return even if the aggregate amount required to be deducted and withheld for the quarter is zero dollars. At the time of filing the return, the employer shall pay any amounts of undeposited taxes for the quarter, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. If required under division (I) of this section, the payment shall be made by electronic funds transfer. The tax commissioner shall prescribe the form and other requirements of the quarterly return.

(2) In addition to other returns required to be filed and payments required to be made under this section, every employer required to deduct and withhold taxes shall file, not later than the thirty-first day of January of each year, an annual return covering, but not limited to, both the aggregate amount deducted and withheld and the aggregate amount required to be deducted and withheld during the entire preceding year for the tax imposed under section 5747.02 of the Revised Code and for each tax imposed under Chapter 5748. of the Revised Code. At the time of filing that return, the employer shall pay over any amounts of undeposited taxes for the preceding year, whether actually deducted and withheld or required to be deducted and withheld, that have not been previously paid. The employer shall make the annual report, to each employee and to the tax commissioner, of the compensation paid and each tax withheld, as the commissioner by rule may prescribe.

Each employer required to deduct and withhold any tax is liable for the payment of that amount required to be deducted and withheld, whether or not the tax has in fact been withheld, unless the failure to withhold was based upon the employer's good faith in reliance upon the statement of the employee as to liability, and the amount shall be deemed to be a special fund in trust for the general revenue fund.

(F) Each employer shall file with the employer's annual return the following items of information on employees for whom withholding is required under section 5747.06 of the Revised Code:

(1) The full name of each employee, the employee's address, the employee's school district of residence, and in the case of a nonresident employee, the employee's principal county of employment;

(2) The social security number of each employee;

(3) The total amount of compensation paid before any deductions to each employee for the period for which the annual return is made;

(4) The amount of the tax imposed by section 5747.02 of the Revised Code and the amount of each tax imposed under Chapter 5748. of the Revised Code withheld from the compensation of the employee for the period for which the annual return is made. The commissioner may extend upon good cause the period for filing any notice or return required to be filed under this section and may adopt rules relating to extensions of time. If the extension results in an extension of time for the payment of the amounts withheld with respect to which the return is filed, the employer shall pay, at the time the amount withheld is paid, an amount of interest computed at the rate per annum prescribed by section 5703.47 of the Revised Code on that amount withheld, from the day that amount was originally required to be paid to the day of actual payment or to the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(5) In addition to all other interest charges and penalties imposed, all amounts of taxes withheld or required to be withheld and remaining unpaid after the day the amounts are required to be paid shall bear interest from the date prescribed for payment at the rate per annum prescribed by section 5703.47 of the Revised Code on the amount unpaid, in addition to the amount withheld, until paid or until the day an assessment is issued under section 5747.13 of the Revised Code, whichever occurs first.

(G) An employee of a corporation, limited liability company, or business trust having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer, member, manager, or trustee of a corporation, limited liability company, or business trust who is responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust does not discharge a responsible officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or pay tax due.

(H) If an employer required to deduct and withhold income tax from compensation and to pay that tax to the state under sections 5747.06 and 5747.07 of the Revised Code sells the employer's business or stock of merchandise or quits the employer's business, the taxes required to be deducted and withheld and paid to the state pursuant to those sections prior to that time, together with any interest and penalties imposed on those taxes, become due and payable immediately, and that person shall make a final return within fifteen days after the date of selling or quitting business. The employer's successor shall withhold a sufficient amount of the purchase money to cover the amount of the taxes, interest, and penalties due and unpaid, until the former owner produces a receipt from the tax commissioner showing that the taxes, interest, and penalties have been paid or a certificate indicating that no such taxes are due. If the purchaser of the business or stock of merchandise fails to withhold purchase money, the purchaser shall be personally liable for the payment of the taxes, interest, and penalties accrued and unpaid during the operation of the business by the former owner. If the amount of taxes, interest, and penalties outstanding at the time of the purchase exceeds the total purchase money, the tax commissioner in the commissioner's discretion may adjust the liability of the seller or the responsibility of the purchaser to pay that liability to maximize the collection of withholding tax revenue.

(I)~~(1)~~ An employer ~~described in division (I)(2) of this section~~ whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year shall make all payments required by this section for the year by electronic funds transfer under section 5747.072 of the Revised Code.

~~(2)(a) For 1994, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1993.~~

~~(b) For 1995, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded five hundred thousand dollars during the twelve-month period ending June 30, 1994.~~

~~(c) For 1996, an employer described in division (I)(2) of this section is one whose actual or~~

~~required payments under this section exceeded three hundred thousand dollars during the twelve-month period ending June 30, 1995.~~

~~(d) For 1997 through 2000, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.~~

~~(e) For 2001 and thereafter, an employer described in division (I)(2) of this section is one whose actual or required payments under this section exceeded eighty-four thousand dollars during the twelve-month period ending on the thirtieth day of June of the preceding calendar year.~~

(J)(1) Every professional employer organization and every professional employer organization reporting entity shall file a report with the tax commissioner within thirty days after commencing business in this state ~~or within thirty days after the effective date of this amendment, whichever is later,~~ that includes all of the following information:

(a) The name, address, number the employer receives from the secretary of state to do business in this state, if applicable, and federal employer identification number of each client employer of the professional employer organization or professional employer organization reporting entity;

(b) The date that each client employer became a client of the professional employer organization or professional employer organization reporting entity;

(c) The names and mailing addresses of the chief executive officer and the chief financial officer of each client employer for taxation of the client employer.

(2) Beginning with the calendar quarter ending after a professional employer organization or professional employer organization reporting entity files the report required under division (J)(1) of this section, and every calendar quarter thereafter, the professional employer organization or the professional employer organization reporting entity shall file an updated report with the tax commissioner. The professional employer organization or professional employer organization reporting entity shall file the updated report not later than the last day of the month following the end of the calendar quarter and shall include all of the following information in the report:

(a) If an entity became a client employer of the professional employer organization or professional employer organization reporting entity at any time during the calendar quarter, all of the information required under division (J)(1) of this section for each new client employer;

(b) If an entity terminated the professional employer organization agreement between the professional employer organization or professional employer organization reporting entity and the entity at any time during the calendar quarter, the information described in division (J)(1)(a) of this section for that entity, the date during the calendar quarter that the entity ceased being a client of the professional employer organization or professional employer organization reporting entity, if applicable, or the date the entity ceased business operations in this state, if applicable;

(c) If the name or mailing address of the chief executive officer or the chief financial officer of a client employer has changed since the professional employer organization or professional employer organization reporting entity previously submitted a report under division (J)(1) or (2) of this section, the updated name or mailing address, or both, of the chief executive officer or the chief financial officer, as applicable;

(d) If none of the events described in divisions (J)(2)(a) to (c) of this section occurred during

the calendar quarter, a statement of that fact.

Sec. 5747.082. (A) As used in this section:

(1) "Electronic technology" means electronic technology acceptable to the tax commissioner under division (B) of this section.

(2) "Original tax return" means any report, return, or other tax document required to be filed under this chapter for the purpose of reporting the taxes due under, and withholdings required by, this chapter. "Original tax return" does not include an amended return or any declaration or form required by or filed in connection with section 5747.09 of the Revised Code.

(3) "Related member" has the same meaning as in section 5733.042 of the Revised Code.

(4) "Tax return preparer" means any person that operates a business that prepares, or directly or indirectly employs another person to prepare, for a taxpayer an original tax return in exchange for compensation or remuneration from the taxpayer or the taxpayer's related member. With respect to the preparation of a return or application for refund under this chapter, "tax return preparer" does not include an individual who performs only one or more of the following activities:

(a) Furnishes typing, reproducing, or other mechanical assistance;

(b) Prepares an application for refund or a return on behalf of an employer by whom the individual is regularly and continuously employed, or on behalf of an officer or employee of that employer;

(c) Prepares as a fiduciary an application for refund or a return;

(d) Prepares an application for refund or a return for a taxpayer in response to a notice of deficiency issued to the taxpayer or the taxpayer's related member, or in response to a waiver of restriction after the commencement of an audit of the taxpayer or the taxpayer's related member.

(B) Divisions (C) and (D) of this section apply to the filing of original tax returns that are due in a calendar year only if the tax commissioner, by the last day of the calendar year immediately preceding the calendar year in which such returns are due, has published on the department of taxation's official internet web site at least one method of electronic technology acceptable to the commissioner for filing such returns.

(C) A tax return preparer that prepares more than ~~seventy-five original tax returns during any calendar year that ends before January 1, 2013, or that prepares more than~~ eleven original tax returns during any calendar year ~~that begins on or after January 1, 2013,~~ shall use electronic technology to file with the tax commissioner all original tax returns prepared by the tax return preparer. ~~This division does not apply to a tax return preparer in any calendar year that ends before January 1, 2013, if, during the previous calendar year, the tax return preparer prepared no more than twenty-five original tax returns.~~ This division does not apply to a tax return preparer in any calendar year ~~that begins on or after January 1, 2013,~~ if, during the previous calendar year, the tax return preparer prepared not more than ten original tax returns.

(D) If a tax return preparer required by this section to submit original tax returns by electronic technology files an original tax return by some means other than by electronic technology, the tax commissioner shall impose a penalty of fifty dollars for each return~~, in excess of seventy-five in calendar year 2010, 2011, or 2012, or~~ in excess of eleven in any calendar year ~~thereafter,~~ that is not filed by electronic technology. Upon good cause shown by the tax return preparer, the tax commissioner may waive all or any portion of the penalty or may refund all or any portion of the

penalty the tax return preparer has paid.

Sec. 5747.11. (A) The tax commissioner shall refund to employers, qualifying entities, or taxpayers subject to a tax imposed under section 5733.41, 5747.02, or 5747.41, or Chapter 5748. of the Revised Code the amount of any overpayment of such tax.

(B) Except as otherwise provided under divisions (D) and (E) of this section, applications for refund shall be filed with the tax commissioner, on the form prescribed by the commissioner, within four years from the date of the illegal, erroneous, or excessive payment of the tax, or within any additional period allowed by division (B)(3)(b) of section 5747.05, division (E) of section 5747.10, division (A) of section 5747.13, or division (C) of section 5747.45 of the Revised Code.

On filing of the refund application, the commissioner shall determine the amount of refund due and, if that amount exceeds one dollar, certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code. Payment shall be made as provided in division (C) of section 126.35 of the Revised Code.

(C)(1) Interest shall be allowed and paid at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the tax imposed under section 5747.02 or Chapter 5748. of the Revised Code from the date of the overpayment until the date of the refund of the overpayment, except that if any overpayment is refunded within ninety days after the final filing date of the annual return or ninety days after the return is filed, whichever is later, no interest shall be allowed on such overpayment. If the overpayment results from the carryback of a net operating loss or net capital loss to a previous taxable year, the overpayment is deemed not to have been made prior to the filing date, including any extension thereof, for the taxable year in which the net operating loss or net capital loss arises. For purposes of the payment of interest on overpayments, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for that year was due without regard to any extension of time for filing such return.

(2) Interest shall be allowed at the rate per annum prescribed by section 5703.47 of the Revised Code on amounts refunded with respect to the taxes imposed under sections 5733.41 and 5747.41 of the Revised Code. The interest shall run from whichever of the following days is the latest until the day the refund is paid: the day the illegal, erroneous, or excessive payment was made; the ninetieth day after the final day the annual report was required to be filed under section 5747.42 of the Revised Code; or the ninetieth day after the day that report was filed.

(D) "Ninety days" shall be substituted for "four years" in division (B) of this section if the taxpayer satisfies both of the following conditions:

(1) The taxpayer has applied for a refund based in whole or in part upon section 5747.059 of the Revised Code;

(2) The taxpayer asserts that either the imposition or collection of the tax imposed or charged by this chapter or any portion of such tax violates the Constitution of the United States or the Constitution of Ohio.

(E)(1) Division (E)(2) of this section applies only if all of the following conditions are satisfied:

(a) A qualifying entity pays an amount of the tax imposed by section 5733.41 or 5747.41 of the Revised Code;

(b) The taxpayer is a qualifying investor as to that qualifying entity;

(c) The taxpayer did not claim the credit provided for in section 5747.059 of the Revised Code as to the tax described in division (E)(1)(a) of this section;

(d) The four-year period described in division (B) of this section has ended as to the taxable year for which the taxpayer otherwise would have claimed that credit.

(2) A taxpayer shall file an application for refund pursuant to division (E) of this section within one year after the date the payment described in division (E)(1)(a) of this section is made. An application filed under division (E)(2) of this section shall claim refund only of overpayments resulting from the taxpayer's failure to claim the credit described in division (E)(1)(c) of this section. Nothing in division (E) of this section shall be construed to relieve a taxpayer from complying with division ~~(A)(16)~~ (A)(15) of section 5747.01 of the Revised Code.

Sec. 5747.231. As used in this section, "adjusted qualifying amount" has the same meaning as in section 5733.40 of the Revised Code.

This section does not apply to division ~~(BB)~~(AA)(5)(a)(ii) of section 5747.01 of the Revised Code.

Except as set forth in this section and except as otherwise provided in divisions (A) and (B) of section 5733.401 of the Revised Code, in making all apportionment, allocation, income, gain, loss, deduction, tax, and credit computations under this chapter, each person shall include in that person's items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales, the person's entire distributive share or proportionate share of the items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales of any pass-through entity in which the person has a direct or indirect ownership interest at any time during the person's taxable year. A pass-through entity's direct or indirect distributive share or proportionate share of any other pass-through entity's items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales shall be included for the purposes of computing the person's distributive share or proportionate share of the pass-through entity's items of business income, nonbusiness income, adjusted qualifying amounts, allocable income or loss, apportionable income or loss, property, compensation, and sales under this section. Those items shall be in the same form as was recognized by the pass-through entity.

Sec. 5747.41. For the same purposes for which the tax is levied under section 5747.02 of the Revised Code, there is hereby levied a withholding tax on every qualifying pass-through entity having at least one qualifying investor who is an individual and on every qualifying trust having at least one qualifying beneficiary who is an individual. The withholding tax imposed by this section is imposed on the sum of the adjusted qualifying amounts of a qualifying pass-through entity's qualifying investors who are individuals and on the sum of the adjusted qualifying amounts of a qualifying trust's qualifying beneficiaries, at the rate of five per cent of that sum.

The tax imposed by this section applies only if the qualifying entity has nexus with this state under the Constitution of the United States for any portion of the qualifying entity's qualifying taxable year, and the sum of the qualifying entity's adjusted qualifying amounts exceeds one thousand dollars for the qualifying entity's qualifying taxable year.

~~The levy of the tax under this section does not prevent a municipal corporation or a joint economic development district created under section 715.70, 715.71, or 715.72 of the Revised Code from levying a tax on income.~~

Sec. 5747.51. (A) On or before the twenty-fifth day of July of each year, the tax commissioner shall make and certify to the county auditor of each county an estimate of the amount of the local government fund to be allocated to the undivided local government fund of each county for the ensuing calendar year, adjusting the total as required to account for subdivisions receiving local government funds under section 5747.502 of the Revised Code.

(B) At each annual regular session of the county budget commission convened pursuant to section 5705.27 of the Revised Code, each auditor shall present to the commission the certificate of the commissioner, the annual tax budget and estimates, and the records showing the action of the commission in its last preceding regular session. The commission, after extending to the representatives of each subdivision an opportunity to be heard, under oath administered by any member of the commission, and considering all the facts and information presented to it by the auditor, shall determine the amount of the undivided local government fund needed by and to be apportioned to each subdivision for current operating expenses, as shown in the tax budget of the subdivision. This determination shall be made pursuant to divisions (C) to (I) of this section, unless the commission has provided for a formula pursuant to section 5747.53 of the Revised Code. The commissioner shall reduce the amount of funds from the undivided local government fund to a subdivision required to receive reduced funds under section 5747.502 of the Revised Code.

Nothing in this section prevents the budget commission, for the purpose of apportioning the undivided local government fund, from inquiring into the claimed needs of any subdivision as stated in its tax budget, or from adjusting claimed needs to reflect actual needs. For the purposes of this section, "current operating expenses" means the lawful expenditures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision.

(C) The commission shall determine the combined total of the estimated expenditures, including transfers, from the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities operated by a subdivision, as shown in the subdivision's tax budget for the ensuing calendar year.

(D) From the combined total of expenditures calculated pursuant to division (C) of this section, the commission shall deduct the following expenditures, if included in these funds in the tax budget:

(1) Expenditures for permanent improvements as defined in division (E) of section 5705.01 of the Revised Code;

(2) In the case of counties and townships, transfers to the road and bridge fund, and in the case of municipalities, transfers to the street construction, maintenance, and repair fund and the state highway improvement fund;

(3) Expenditures for the payment of debt charges;

(4) Expenditures for the payment of judgments.

(E) In addition to the deductions made pursuant to division (D) of this section, revenues

accruing to the general fund and any special fund considered under division (C) of this section from the following sources shall be deducted from the combined total of expenditures calculated pursuant to division (C) of this section:

(1) Taxes levied within the ten-mill limitation, as defined in section 5705.02 of the Revised Code;

(2) The budget commission allocation of estimated county public library fund revenues to be distributed pursuant to section 5747.48 of the Revised Code;

(3) Estimated unencumbered balances as shown on the tax budget as of the thirty-first day of December of the current year in the general fund, but not any estimated balance in any special fund considered in division (C) of this section;

(4) Revenue, including transfers, shown in the general fund and any special funds other than special funds established for road and bridge; street construction, maintenance, and repair; state highway improvement; and gas, water, sewer, and electric public utilities, from all other sources except those that a subdivision receives from an additional tax or service charge voted by its electorate or receives from special assessment or revenue bond collection. For the purposes of this division, where the charter of a municipal corporation prohibits the levy of an income tax, an income tax levied by the legislative authority of such municipal corporation pursuant to an amendment of the charter of that municipal corporation to authorize such a levy represents an additional tax voted by the electorate of that municipal corporation. For the purposes of this division, any measure adopted by a board of county commissioners pursuant to section 322.02, 4504.02, or 5739.021 of the Revised Code, including those measures upheld by the electorate in a referendum conducted pursuant to section 322.021, 4504.021, or 5739.022 of the Revised Code, shall not be considered an additional tax voted by the electorate.

Subject to division ~~(G)~~ (F) of section 5705.29 of the Revised Code, money in a reserve balance account established by a county, township, or municipal corporation under section 5705.13 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Money in a reserve balance account established by a township under section 5705.132 of the Revised Code shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section.

If a county, township, or municipal corporation has created and maintains a nonexpendable trust fund under section 5705.131 of the Revised Code, the principal of the fund, and any additions to the principal arising from sources other than the reinvestment of investment earnings arising from such a fund, shall not be considered an unencumbered balance or revenue under division (E)(3) or (4) of this section. Only investment earnings arising from investment of the principal or investment of such additions to principal may be considered an unencumbered balance or revenue under those divisions.

(F) The total expenditures calculated pursuant to division (C) of this section, less the deductions authorized in divisions (D) and (E) of this section, shall be known as the "relative need" of the subdivision, for the purposes of this section.

(G) The budget commission shall total the relative need of all participating subdivisions in the county, and shall compute a relative need factor by dividing the total estimate of the undivided local government fund by the total relative need of all participating subdivisions.

(H) The relative need of each subdivision shall be multiplied by the relative need factor to determine the proportionate share of the subdivision in the undivided local government fund of the county; provided, that the maximum proportionate share of a county shall not exceed the following maximum percentages of the total estimate of the undivided local government fund governed by the relationship of the percentage of the population of the county that resides within municipal corporations within the county to the total population of the county as reported in the reports on population in Ohio by the department of development as of the twentieth day of July of the year in which the tax budget is filed with the budget commission:

	1	2
A	Percentage of municipal population within the county:	Percentage share of the county shall not exceed:
B	Less than forty-one per cent	Sixty per cent
C	Forty-one per cent or more but less than eighty-one per cent	Fifty per cent
D	Eighty-one per cent or more	Thirty per cent

Where the proportionate share of the county exceeds the limitations established in this division, the budget commission shall adjust the proportionate shares determined pursuant to this division so that the proportionate share of the county does not exceed these limitations, and it shall increase the proportionate shares of all other subdivisions on a pro rata basis. In counties having a population of less than one hundred thousand, not less than ten per cent shall be distributed to the townships therein.

(I) The proportionate share of each subdivision in the undivided local government fund determined pursuant to division (H) of this section for any calendar year shall not be less than the product of the average of the percentages of the undivided local government fund of the county as apportioned to that subdivision for the calendar years 1968, 1969, and 1970, multiplied by the total amount of the undivided local government fund of the county apportioned pursuant to former section ~~5735.23~~ 5739.23 of the Revised Code for the calendar year 1970. For the purposes of this division, the total apportioned amount for the calendar year 1970 shall be the amount actually allocated to the county in 1970 from the state collected intangible tax as levied by section 5707.03 of the Revised Code and distributed pursuant to section 5725.24 of the Revised Code, plus the amount received by the county in the calendar year 1970 pursuant to division (B)(1) of former section 5739.21 of the Revised Code, and distributed pursuant to former section 5739.22 of the Revised Code. If the total amount of the undivided local government fund for any calendar year is less than the amount of the undivided local government fund apportioned pursuant to former section 5739.23 of the Revised

Code for the calendar year 1970, the minimum amount guaranteed to each subdivision for that calendar year pursuant to this division shall be reduced on a basis proportionate to the amount by which the amount of the undivided local government fund for that calendar year is less than the amount of the undivided local government fund apportioned for the calendar year 1970.

(J) On the basis of such apportionment, the county auditor shall compute the percentage share of each such subdivision in the undivided local government fund and shall at the same time certify to the tax commissioner the percentage share of the county as a subdivision. No payment shall be made from the undivided local government fund, except in accordance with such percentage shares.

Within ten days after the budget commission has made its apportionment, whether conducted pursuant to section 5747.51 or 5747.53 of the Revised Code, the auditor shall publish a list of the subdivisions and the amount each is to receive from the undivided local government fund and the percentage share of each subdivision, in a newspaper or newspapers of countywide circulation, and send a copy of such allocation to the tax commissioner.

The county auditor shall also send a copy of such allocation by ordinary or electronic mail to the fiscal officer of each subdivision entitled to participate in the allocation of the undivided local government fund of the county. This copy shall constitute the official notice of the commission action referred to in section 5705.37 of the Revised Code.

All money received into the treasury of a subdivision from the undivided local government fund in a county treasury shall be paid into the general fund and used for the current operating expenses of the subdivision.

If a municipal corporation maintains a municipal university, such municipal university, when the board of trustees so requests the legislative authority of the municipal corporation, shall participate in the money apportioned to such municipal corporation from the total local government fund, however created and constituted, in such amount as requested by the board of trustees, provided such sum does not exceed nine per cent of the total amount paid to the municipal corporation.

If any public official fails to maintain the records required by sections 5747.50 to 5747.55 of the Revised Code or by the rules issued by the tax commissioner, the auditor of state, or the treasurer of state pursuant to such sections, or fails to comply with any law relating to the enforcement of such sections, the local government fund money allocated to the county may be withheld until such time as the public official has complied with such sections or such law or the rules issued pursuant thereto.

Sec. 5747.52. The form used by the county budget commission to calculate subdivision shares of the undivided local government fund as apportioned pursuant to section 5747.51 of the Revised Code shall be as follows:

Calculation of (name of subdivision) share of undivided local government fund for (name of county) county

	1	2
A	Authorized expenditure for subdivision	Total

B	1. Estimated expenditures from general fund	_____
C	2. Estimated expenditures from special funds other than those established for road and bridge, street construction, maintenance, and state highway improvement, and for gas, water, sewer, and electric public utilities	_____
D	3. Total	_____
E	Deductions from authorized expenditures	
F	4. Expenditures for permanent improvements	_____
G	5. Transfers to road and bridge fund (counties and townships only)	_____
H	6. Transfers to street construction, maintenance, and repair, and state highway improvements funds	_____
I	7. Expenditures for the payment of debt charges	_____
J	8. Expenditures for the payment of judgments	_____
K	9. Taxes levied inside the "ten-mill limitation"	_____
L	10. Budget commission allocation of estimated county public library fund revenues	_____
M	11. Estimated ~~unemcumbered~~ unencumbered balances as of December 31 of current year in the general funds as stated in the tax budget	_____
N	12. Revenue, including transfers, shown in the general fund or any special funds other than special funds established for road and bridge, street construction, maintenance, and repair, and state highway improvement, and for gas, water, sewer, and electric public utilities, from all other sources except those from additional taxes or service charges voted by electorate as defined in division (E)(4) of section 5747.51 of the Revised Code, and except revenue from special assessment and revenue bond collections	_____

O	13. Total	_____
P	Calculation of subdivision share	
Q	14. Relative need of subdivision (line 3 less line 13)	_____
R	15. Relative need factor for county (total estimate of undivided local government fund divided by total relative need of all participating subdivisions)	_____
S	16. Proportionate share of subdivision (relative need of subdivision multiplied by relative need factor)	_____
T	17. After any adjustments necessary to comply with statutory maximum share allowable to county	_____
U	18. After any adjustments necessary to comply with statutory minimum share allowable to townships	_____
V	19. After any adjustments necessary to comply with minimum guarantee in division (I) of section 5747.51 of the Revised Code	_____
W	20. Proportionate share of subdivision (line 16, 17, 18, or 19, whichever is appropriate)	_____

Sec. 5747.55. The action of the county budget commission under ~~sections~~ section 5747.51 ~~and 5747.62~~ of the Revised Code may be appealed to the board of tax appeals in the manner and with the effect provided in section 5705.37 of the Revised Code, in accordance with the following rules:

(A) The notice of appeal shall be signed by the authorized fiscal officer and shall set forth in clear and concise language:

(1) A statement of the action of the budget commission appealed from, and the date of the receipt by the subdivision of the official certificate or notice of such action;

(2) The error or errors the taxing district believes the budget commission made;

(3) The specific relief sought by the taxing district.

(B) The notice of appeal shall have attached thereto:

(1) A certified copy of the resolution of the taxing authority authorizing the fiscal officer to file the appeal;

(2) An exact copy of the official certificate, or notice of the action of the budget commission appealed from;

(3) An exact copy of the budget request filed with the budget commission by the complaining subdivision, with the date of filing noted thereon.

(C) There shall also be attached to the notice of appeal a statement showing:

(1) The name of the fund involved, the total amount in dollars allocated, and the exact amount in dollars allocated to each participating subdivision;

(2) The amount in dollars which the complaining subdivision believes it should have received;

(3) The name of each participating subdivision, as well as the name and address of the fiscal officer thereof, that the complaining subdivision believes received more than its proper share of the allocation, and the exact amount in dollars of such alleged over-allocation.

(D) Only the participating subdivisions named pursuant to division (C) of this section are to be considered as appellees before the board of tax appeals and no change shall, in any amount, be made in the amount allocated to participating subdivisions not appellees.

(E) The total of the undivided local government fund or undivided local government revenue assistance fund to be allocated by the board of tax appeals upon appeal is the total of that fund allocated by the budget commission to those subdivisions which are appellants and appellees before the board of tax appeals.

Sec. 5747.98. (A) To provide a uniform procedure for calculating a taxpayer's aggregate tax liability under section 5747.02 of the Revised Code, a taxpayer shall claim any credits to which the taxpayer is entitled in the following order:

~~(1)~~ Either the retirement income credit under division (B) of section 5747.055 of the Revised Code or the lump sum retirement income credits under divisions (C), (D), and (E) of that section;

~~(2)~~ Either the senior citizen credit under division (F) of section 5747.055 of the Revised Code or the lump sum distribution credit under division (G) of that section;

~~(3)~~ The dependent care credit under section 5747.054 of the Revised Code;

~~(4)~~ The credit for displaced workers who pay for job training under section 5747.27 of the Revised Code;

~~(5)~~ The twenty-dollar personal exemption credit under section 5747.022 of the Revised Code;

~~(6)~~ The joint filing credit under division (G) of section 5747.05 of the Revised Code;

~~(7)~~ The earned income credit under section 5747.71 of the Revised Code;

~~(8)~~ The credit for adoption of a minor child under section 5747.37 of the Revised Code;

~~(9)~~ The nonrefundable job retention credit under division (B) of section 5747.058 of the Revised Code;

~~(10)~~ The enterprise zone credit under section 5709.66 of the Revised Code;

~~(11) The ethanol plant investment credit under section 5747.75 of the Revised Code;~~

~~(12)~~ The credit for purchases of qualifying grape production property under section 5747.28 of the Revised Code;

~~(13)~~ The small business investment credit under section 5747.81 of the Revised Code;

~~(14)~~ The nonrefundable lead abatement credit under section 5747.26 of the Revised Code;

~~(15)~~ The opportunity zone investment credit under section 122.84 of the Revised Code;

~~(16)~~ The enterprise zone credits under section 5709.65 of the Revised Code;

~~(17)~~ The research and development credit under section 5747.331 of the Revised Code;

~~(18)~~ The credit for rehabilitating a historic building under section 5747.76 of the Revised Code;

~~(19)~~ The nonresident credit under division (A) of section 5747.05 of the Revised Code;

~~(20)~~ The credit for a resident's out-of-state income under division (B) of section 5747.05 of the Revised Code;

~~(21)~~ The refundable motion picture and broadway theatrical production credit under section 5747.66 of the Revised Code;

~~(22)~~ The refundable jobs creation credit or job retention credit under division (A) of section 5747.058 of the Revised Code;

~~(23)~~ The refundable credit for taxes paid by a qualifying entity granted under section 5747.059 of the Revised Code;

~~(24)~~ The refundable credits for taxes paid by a qualifying pass-through entity granted under division (I) of section 5747.08 of the Revised Code;

~~(25)~~ The refundable credit under section 5747.80 of the Revised Code for losses on loans made to the Ohio venture capital program under sections 150.01 to 150.10 of the Revised Code;

~~(26)~~ The refundable credit for rehabilitating a historic building under section 5747.76 of the Revised Code.

(B) For any credit, except the refundable credits enumerated in this section and the credit granted under division (H) of section 5747.08 of the Revised Code, the amount of the credit for a taxable year shall not exceed the taxpayer's aggregate amount of tax due under section 5747.02 of the Revised Code, after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating that credit. Nothing in this chapter shall be construed to allow a taxpayer to claim, directly or indirectly, a credit more than once for a taxable year.

Sec. 5748.08. (A) The board of education of a city, local, or exempted village school district, at any time by a vote of two-thirds of all its members, may declare by resolution that it may be necessary for the school district to do all of the following:

(1) Raise a specified amount of money for school district purposes by levying an annual tax on school district income;

(2) Issue general obligation bonds for permanent improvements, stating in the resolution the necessity and purpose of the bond issue and the amount, approximate date, estimated rate of interest, and maximum number of years over which the principal of the bonds may be paid;

(3) Levy a tax outside the ten-mill limitation to pay debt charges on the bonds and any anticipatory securities;

(4) Submit the question of the school district income tax and bond issue to the electors of the district at a special election.

The resolution shall specify whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in divisions (E)(1)(a) and (2) of section 5748.01 of the Revised Code or taxable income of individuals as defined in division (E)(1)(b) of that section.

On adoption of the resolution, the board shall certify a copy of it to the tax commissioner and the county auditor no later than one hundred five days prior to the date of the special election at which the board intends to propose the income tax and bond issue. Not later than ten days of receipt of the resolution, the tax commissioner, in the same manner as required by division (A) of section 5748.02 of the Revised Code, shall estimate the rates designated in divisions (A)(1) and (2) of that

section and certify them to the board. Not later than ten days of receipt of the resolution, the county auditor shall estimate and certify to the board the average annual property tax rate required throughout the stated maturity of the bonds to pay debt charges on the bonds, in the same manner as under division (C) of section 133.18 of the Revised Code.

(B) On receipt of the tax commissioner's and county auditor's certifications prepared under division (A) of this section, the board of education of the city, local, or exempted village school district, by a vote of two-thirds of all its members, may adopt a resolution proposing for a specified number of years or for a continuing period of time the levy of an annual tax for school district purposes on school district income and declaring that the amount of taxes that can be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the present and future requirements of the school district; that it is necessary to issue general obligation bonds of the school district for specified permanent improvements and to levy an additional tax in excess of the ten-mill limitation to pay the debt charges on the bonds and any anticipatory securities; and that the question of the bonds and taxes shall be submitted to the electors of the school district at a special election, which shall not be earlier than ninety days after certification of the resolution to the board of elections, and the date of which shall be consistent with section 3501.01 of the Revised Code. The resolution shall specify all of the following:

(1) The purpose for which the school district income tax is to be imposed and the rate of the tax, which shall be the rate set forth in the tax commissioner's certification rounded to the nearest one-fourth of one per cent;

(2) Whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in divisions (E)(1)(a) and (2) of section 5748.01 of the Revised Code or taxable income of individuals as defined in division (E)(1)(b) of that section. The specification shall be the same as the specification in the resolution adopted and certified under division (A) of this section.

(3) The number of years the tax will be levied, or that it will be levied for a continuing period of time;

(4) The date on which the tax shall take effect, which shall be the first day of January of any year following the year in which the question is submitted;

(5) The county auditor's estimate of the average annual property tax rate required throughout the stated maturity of the bonds to pay debt charges on the bonds.

(C) A resolution adopted under division (B) of this section shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. Immediately after its adoption and at least ninety days prior to the election at which the question will appear on the ballot, the board of education shall certify a copy of the resolution, along with copies of the auditor's estimate and its resolution under division (A) of this section, to the board of elections of the proper county. The board of ~~education~~ elections shall make the arrangements for the submission of the question to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the district for the election of county officers.

The resolution shall be put before the electors as one ballot question, with a majority vote indicating approval of the school district income tax, the bond issue, and the levy to pay debt charges on the bonds and any anticipatory securities. The board of elections shall publish the notice of the

election in a newspaper of general circulation in the school district once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, it also shall post notice of the election on its web site for thirty days prior to the election. The notice of election shall state all of the following:

(1) The questions to be submitted to the electors;

(2) The rate of the school district income tax;

(3) The principal amount of the proposed bond issue;

(4) The permanent improvements for which the bonds are to be issued;

(5) The maximum number of years over which the principal of the bonds may be paid;

(6) The estimated additional average annual property tax rate to pay the debt charges on the bonds, as certified by the county auditor;

(7) The time and place of the special election.

(D) The form of the ballot on a question submitted to the electors under this section shall be as follows:

"Shall the _____ school district be authorized to do both of the following:

(1) Impose an annual income tax of _____ (state the proposed rate of tax) on the school district income of individuals and of estates, for _____ (state the number of years the tax would be levied, or that it would be levied for a continuing period of time), beginning _____ (state the date the tax would first take effect), for the purpose of _____ (state the purpose of the tax)?

(2) Issue bonds for the purpose of _____ in the principal amount of $_____, to be repaid annually over a maximum period of _____ years, and levy a property tax outside the ten-mill limitation estimated by the county auditor to average over the bond repayment period _____ mills for each one dollar of tax valuation, which amounts to _____ (rate expressed in cents or dollars and cents, such as "36 cents" or "$1.41") for each $100 of tax valuation, to pay the annual debt charges on the bonds, and to pay debt charges on any notes issued in anticipation of those bonds?

FOR THE INCOME TAX AND
BOND ISSUE
"

AGAINST THE INCOME TAX
AND BOND ISSUE

(E) If the question submitted to electors proposes a school district income tax only on the taxable income of individuals as defined in division (E)(1)(b) of section 5748.01 of the Revised Code, the form of the ballot shall be modified by stating that the tax is to be levied on the "earned income of individuals residing in the school district" in lieu of the "school district income of individuals and of estates."

(F) The board of elections promptly shall certify the results of the election to the tax commissioner and the county auditor of the county in which the school district is located. If a

majority of the electors voting on the question vote in favor of it, the income tax and the applicable provisions of Chapter 5747. of the Revised Code shall take effect on the date specified in the resolution, and the board of education may proceed with issuance of the bonds and with the levy and collection of the property taxes to pay debt charges on the bonds, at the additional rate or any lesser rate in excess of the ten-mill limitation. Any securities issued by the board of education under this section are Chapter 133. securities, as that term is defined in section 133.01 of the Revised Code.

(G) After approval of a question under this section, the board of education may anticipate a fraction of the proceeds of the school district income tax in accordance with section 5748.05 of the Revised Code. Any anticipation notes under this division shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(H) The question of repeal of a school district income tax levied for more than five years may be initiated and submitted in accordance with section 5748.04 of the Revised Code.

(I) No board of education shall submit a question under this section to the electors of the school district more than twice in any calendar year. If a board submits the question twice in any calendar year, one of the elections on the question shall be held on the date of the general election.

Sec. 5748.09. (A) The board of education of a city, local, or exempted village school district, at any time by a vote of two-thirds of all its members, may declare by resolution that it may be necessary for the school district to do all of the following:

(1) Raise a specified amount of money for school district purposes by levying an annual tax on school district income;

(2) Levy an additional property tax in excess of the ten-mill limitation for the purpose of providing for the necessary requirements of the district, stating in the resolution the amount of money to be raised each year for such purpose;

(3) Submit the question of the school district income tax and property tax to the electors of the district at a special election.

The resolution shall specify whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in divisions (E)(1)(a) and (2) of section 5748.01 of the Revised Code or taxable income of individuals as defined in division (E)(1)(b) of that section.

On adoption of the resolution, the board shall certify a copy of it to the tax commissioner and the county auditor not later than one hundred days prior to the date of the special election at which the board intends to propose the income tax and property tax. Not later than ten days after receipt of the resolution, the tax commissioner, in the same manner as required by division (A) of section 5748.02 of the Revised Code, shall estimate the rates designated in divisions (A)(1) and (2) of that section and certify them to the board. Not later than ten days after receipt of the resolution, the county auditor, in the same manner as required by section 5705.195 of the Revised Code, shall make the calculation specified in that section and certify it to the board.

(B) On receipt of the tax commissioner's and county auditor's certifications prepared under division (A) of this section, the board of education of the city, local, or exempted village school district, by a vote of two-thirds of all its members, may adopt a resolution declaring that the amount of taxes that can be raised by all tax levies the district is authorized to impose, when combined with

state and federal revenues, will be insufficient to provide an adequate amount for the present and future requirements of the school district, and that it is therefore necessary to levy, for a specified number of years or for a continuing period of time, an annual tax for school district purposes on school district income, and to levy, for a specified number of years not exceeding ten or for a continuing period of time, an additional property tax in excess of the ten-mill limitation for the purpose of providing for the necessary requirements of the district, and declaring that the question of the school district income tax and property tax shall be submitted to the electors of the school district at a special election, which shall not be earlier than ninety days after certification of the resolution to the board of elections, and the date of which shall be consistent with section 3501.01 of the Revised Code. The resolution shall specify all of the following:

(1) The purpose for which the school district income tax is to be imposed and the rate of the tax, which shall be the rate set forth in the tax commissioner's certification rounded to the nearest one-fourth of one per cent;

(2) Whether the income that is to be subject to the tax is taxable income of individuals and estates as defined in divisions (E)(1)(a) and (2) of section 5748.01 of the Revised Code or taxable income of individuals as defined in division (E)(1)(b) of that section. The specification shall be the same as the specification in the resolution adopted and certified under division (A) of this section.

(3) The number of years the school district income tax will be levied, or that it will be levied for a continuing period of time;

(4) The date on which the school district income tax shall take effect, which shall be the first day of January of any year following the year in which the question is submitted;

(5) The amount of money it is necessary to raise for the purpose of providing for the necessary requirements of the district for each year the property tax is to be imposed;

(6) The number of years the property tax will be levied, or that it will be levied for a continuing period of time;

(7) The tax list upon which the property tax shall be first levied, which may be the current year's tax list;

(8) The amount of the average tax levy, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, estimated by the county auditor under division (A) of this section.

(C) A resolution adopted under division (B) of this section shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. Immediately after its adoption and at least ninety days prior to the election at which the question will appear on the ballot, the board of education shall certify a copy of the resolution, along with copies of the county auditor's certification and the resolution under division (A) of this section, to the board of elections of the proper county. The board of education shall make the arrangements for the submission of the question to the electors of the school district, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in the district for the election of county officers.

The resolution shall be put before the electors as one ballot question, with a majority vote indicating approval of the school district income tax and the property tax. The board of elections shall publish the notice of the election in a newspaper of general circulation in the school district

once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, also shall post notice of the election on its web site for thirty days prior to the election. The notice of election shall state all of the following:

(1) The questions to be submitted to the electors as a single ballot question;

(2) The rate of the school district income tax;

(3) The number of years the school district income tax will be levied or that it will be levied for a continuing period of time;

(4) The annual proceeds of the proposed property tax levy for the purpose of providing for the necessary requirements of the district;

(5) The number of years during which the property tax levy shall be levied, or that it shall be levied for a continuing period of time;

(6) The estimated average additional tax rate of the property tax, expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, outside the limitation imposed by Section 2 of Article XII, Ohio Constitution, as certified by the county auditor;

(7) The time and place of the special election.

(D) The form of the ballot on a question submitted to the electors under this section shall be as follows:

"Shall the _____ school district be authorized to do both of the following:

(1) Impose an annual income tax of _____ (state the proposed rate of tax) on the school district income of individuals and of estates, for _____ (state the number of years the tax would be levied, or that it would be levied for a continuing period of time), beginning _____ (state the date the tax would first take effect), for the purpose of _____ (state the purpose of the tax)?

(2) Impose a property tax levy outside of the ten-mill limitation for the purpose of providing for the necessary requirements of the district in the sum of _____ (here insert annual amount the levy is to produce), estimated by the county auditor to average _____ (here insert number of mills) mills for each one dollar of valuation, which amounts to _____ (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (state the number of years the tax is to be imposed or that it will be imposed for a continuing period of time), commencing in _____ (first year the tax is to be levied), first due in calendar year _____ (first calendar year in which the tax shall be due)?

FOR THE INCOME TAX AND
PROPERTY TAX

"

AGAINST THE INCOME TAX
AND PROPERTY TAX

If the question submitted to electors proposes a school district income tax only on the taxable income of individuals as defined in division (E)(1)(b) of section 5748.01 of the Revised Code, the form of the ballot shall be modified by stating that the tax is to be levied on the "earned income of individuals residing in the school district" in lieu of the "school district income of individuals and of estates."

(E) The board of elections promptly shall certify the results of the election to the tax commissioner and the county auditor of the county in which the school district is located. If a majority of the electors voting on the question vote in favor of it:

(1) The income tax and the applicable provisions of Chapter 5747. of the Revised Code shall take effect on the date specified in the resolution.

(2) The board of education of the school district may make the additional property tax levy necessary to raise the amount specified on the ballot for the purpose of providing for the necessary requirements of the district. The property tax levy shall be included in the next tax budget that is certified to the county budget commission.

(F)(1) After approval of a question under this section, the board of education may anticipate a fraction of the proceeds of the school district income tax in accordance with section 5748.05 of the Revised Code. Any anticipation notes under this division shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(2) After the approval of a question under this section and prior to the time when the first tax collection from the property tax levy can be made, the board of education may anticipate a fraction of the proceeds of the levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy. Any anticipation notes under this division shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have a principal payment in the year of their issuance.

(G)(1) The question of repeal of a school district income tax levied for more than five years may be initiated and submitted in accordance with section 5748.04 of the Revised Code.

(2) A property tax levy for a continuing period of time may be reduced in the manner provided under section 5705.261 of the Revised Code.

(H) No board of education shall submit a question under this section to the electors of the school district more than twice in any calendar year. If a board submits the question twice in any calendar year, one of the elections on the question shall be held on the date of the general election.

(I) If the electors of the school district approve a question under this section, and if the last calendar year the school district income tax is in effect and the last calendar year of collection of the property tax are the same, the board of education of the school district may propose to submit under this section the combined question of a school district income tax to take effect upon the expiration of the existing income tax and a property tax to be first collected in the calendar year after the calendar year of last collection of the existing property tax, and specify in the resolutions adopted under this section that the proposed taxes would renew the existing taxes. The form of the ballot on a question submitted to the electors under division (I) of this section shall be as follows:

"Shall the _____ school district be authorized to do both of the following:

(1) Impose an annual income tax of _____ (state the proposed rate of tax) on the school district income of individuals and of estates to renew an income tax expiring at the end of _____ (state the last year the existing income tax may be levied) for _____ (state the number of years the tax would be levied, or that it would be levied for a continuing period of time), beginning _____ (state the date the tax would first take effect), for the purpose of _____ (state the purpose of the tax)?

(2) Impose a property tax levy renewing an existing levy outside of the ten-mill limitation for the purpose of providing for the necessary requirements of the district in the sum of _____ (here insert annual amount the levy is to produce), estimated by the county auditor to average _____ (here insert number of mills) mills for each one dollar of valuation, which amounts to _____ (here insert rate expressed in dollars and cents) for each one hundred dollars of valuation, for _____ (state the number of years the tax is to be imposed or that it will be imposed for a continuing period of time), commencing in _____ (first year the tax is to be levied), first due in calendar year _____ (first calendar year in which the tax shall be due)?

FOR THE INCOME TAX AND
PROPERTY TAX
"
AGAINST THE INCOME TAX
AND PROPERTY TAX

If the question submitted to electors proposes a school district income tax only on the taxable income of individuals as defined in division (E)(1)(b) of section 5748.01 of the Revised Code, the form of the ballot shall be modified by stating that the tax is to be levied on the "earned income of individuals residing in the school district" in lieu of the "school district income of individuals and of estates."

The question of a renewal levy under this division shall not be placed on the ballot unless the question is submitted on a date on which a special election may be held under section 3501.01 of the Revised Code, except for the first Tuesday after the first Monday in ~~February and~~ August, during the last year the property tax levy to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year.

(J) If the electors of the school district approve a question under this section, the board of education of the school district may propose to renew either or both of the existing taxes as individual ballot questions in accordance with section 5748.02 of the Revised Code for the school district income tax, or section 5705.194 of the Revised Code for the property tax.

Sec. 5751.01. As used in this chapter:

(A) "Person" means, but is not limited to, individuals, combinations of individuals of any

form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partnerships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, for-profit corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes, and any other entities.

(B) "Consolidated elected taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter as the result of an election made under section 5751.011 of the Revised Code.

(C) "Combined taxpayer" means a group of two or more persons treated as a single taxpayer for purposes of this chapter under section 5751.012 of the Revised Code.

(D) "Taxpayer" means any person, or any group of persons in the case of a consolidated elected taxpayer or combined taxpayer treated as one taxpayer, required to register or pay tax under this chapter. "Taxpayer" does not include excluded persons.

(E) "Excluded person" means any of the following:

(1) Any person with not more than one hundred fifty thousand dollars of taxable gross receipts during the calendar year. Division (E)(1) of this section does not apply to a person that is a member of a consolidated elected taxpayer;

(2) A public utility that paid the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter, except that a public utility that is a combined company is a taxpayer with regard to the following gross receipts:

(a) Taxable gross receipts directly attributed to a public utility activity, but not directly attributed to an activity that is subject to the excise tax imposed by section 5727.24 or 5727.30 of the Revised Code;

(b) Taxable gross receipts that cannot be directly attributed to any activity, multiplied by a fraction whose numerator is the taxable gross receipts described in division (E)(2)(a) of this section and whose denominator is the total taxable gross receipts that can be directly attributed to any activity;

(c) Except for any differences resulting from the use of an accrual basis method of accounting for purposes of determining gross receipts under this chapter and the use of the cash basis method of accounting for purposes of determining gross receipts under section 5727.24 of the Revised Code, the gross receipts directly attributed to the activity of a natural gas company shall be determined in a manner consistent with division (D) of section 5727.03 of the Revised Code.

As used in division (E)(2) of this section, "combined company" and "public utility" have the same meanings as in section 5727.01 of the Revised Code.

(3) A financial institution, as defined in section 5726.01 of the Revised Code, that paid the tax imposed by section 5726.02 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter;

(4) A person directly or indirectly owned by one or more financial institutions, as defined in section 5726.01 of the Revised Code, that paid the tax imposed by section 5726.02 of the Revised Code based on one or more taxable years that include the entire tax period under this chapter.

For the purposes of division (E)(4) of this section, a person owns another person under the

following circumstances:

(a) In the case of corporations issuing capital stock, one corporation owns another corporation if it owns fifty per cent or more of the other corporation's capital stock with current voting rights;

(b) In the case of a limited liability company, one person owns the company if that person's membership interest, as defined in section 1705.01 of the Revised Code, is fifty per cent or more of the combined membership interests of all persons owning such interests in the company;

(c) In the case of a partnership, trust, or other unincorporated business organization other than a limited liability company, one person owns the organization if, under the articles of organization or other instrument governing the affairs of the organization, that person has a beneficial interest in the organization's profits, surpluses, losses, or distributions of fifty per cent or more of the combined beneficial interests of all persons having such an interest in the organization.

(5) A domestic insurance company or foreign insurance company, as defined in section 5725.01 of the Revised Code, that paid the insurance company premiums tax imposed by section 5725.18 or Chapter 5729. of the Revised Code, or an unauthorized insurance company whose gross premiums are subject to tax under section 3905.36 of the Revised Code based on one or more measurement periods that include the entire tax period under this chapter;

(6) A person that solely facilitates or services one or more securitizations of phase-in-recovery property pursuant to a final financing order as those terms are defined in section 4928.23 of the Revised Code. For purposes of this division, "securitization" means transferring one or more assets to one or more persons and then issuing securities backed by the right to receive payment from the asset or assets so transferred.

(7) Except as otherwise provided in this division, a pre-income tax trust as defined in ~~division (FF)(4) of~~ section 5747.01 of the Revised Code and any pass-through entity of which such pre-income tax trust owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests. If the pre-income tax trust has made a qualifying pre-income tax trust election under division ~~(FF)(3)~~ (EE) of section 5747.01 of the Revised Code, then the trust and the pass-through entities of which it owns or controls, directly, indirectly, or constructively through related interests, more than five per cent of the ownership or equity interests, shall not be excluded persons for purposes of the tax imposed under section 5751.02 of the Revised Code.

(8) Nonprofit organizations or the state and its agencies, instrumentalities, or political subdivisions.

(F) Except as otherwise provided in divisions (F)(2), (3), and (4) of this section, "gross receipts" means the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration.

(1) The following are examples of gross receipts:

(a) Amounts realized from the sale, exchange, or other disposition of the taxpayer's property to or with another;

(b) Amounts realized from the taxpayer's performance of services for another;

(c) Amounts realized from another's use or possession of the taxpayer's property or capital;

(d) Any combination of the foregoing amounts.

(2) "Gross receipts" excludes the following amounts:

(a) Interest income except interest on credit sales;

(b) Dividends and distributions from corporations, and distributive or proportionate shares of receipts and income from a pass-through entity as defined under section 5733.04 of the Revised Code;

(c) Receipts from the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset. Notwithstanding section 1221 of the Internal Revenue Code, receipts from hedging transactions also are excluded to the extent the transactions are entered into primarily to protect a financial position, such as managing the risk of exposure to (i) foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. As used in division (F)(2)(c) of this section, "hedging transaction" has the same meaning as used in section 1221 of the Internal Revenue Code and also includes transactions accorded hedge accounting treatment under statement of financial accounting standards number 133 of the financial accounting standards board. For the purposes of division (F)(2)(c) of this section, the actual transfer of title of real or tangible personal property to another entity is not a hedging transaction.

(d) Proceeds received attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument;

(e) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;

(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;

(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;

(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;

(i) Proceeds received on the account of payments from insurance policies, except those proceeds received for the loss of business revenue;

(j) Gifts or charitable contributions received; membership dues received by trade, professional, homeowners', or condominium associations; and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;

(k) Damages received as the result of litigation in excess of amounts that, if received without

litigation, would be gross receipts;

(l) Property, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee, or other remuneration;

(m) Tax refunds, other tax benefit recoveries, and reimbursements for the tax imposed under this chapter made by entities that are part of the same combined taxpayer or consolidated elected taxpayer group, and reimbursements made by entities that are not members of a combined taxpayer or consolidated elected taxpayer group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under this chapter is required to be reported and paid entirely by one owner, pursuant to the requirements of sections 5751.011 and 5751.012 of the Revised Code;

(n) Pension reversions;

(o) Contributions to capital;

(p) Sales or use taxes collected as a vendor or an out-of-state seller on behalf of the taxing jurisdiction from a consumer or other taxes the taxpayer is required by law to collect directly from a purchaser and remit to a local, state, or federal tax authority;

(q) In the case of receipts from the sale of cigarettes, tobacco products, or vapor products by a wholesale dealer, retail dealer, distributor, manufacturer, vapor distributor, or seller, all as defined in section 5743.01 of the Revised Code, an amount equal to the federal and state excise taxes paid by any person on or for such cigarettes, tobacco products, or vapor products under subtitle E of the Internal Revenue Code or Chapter 5743. of the Revised Code;

(r) In the case of receipts from the sale, transfer, exchange, or other disposition of motor fuel as "motor fuel" is defined in section 5736.01 of the Revised Code, an amount equal to the value of the motor fuel, including federal and state motor fuel excise taxes and receipts from billing or invoicing the tax imposed under section 5736.02 of the Revised Code to another person;

(s) In the case of receipts from the sale of beer or intoxicating liquor, as defined in section 4301.01 of the Revised Code, by a person holding a permit issued under Chapter 4301. or 4303. of the Revised Code, an amount equal to federal and state excise taxes paid by any person on or for such beer or intoxicating liquor under subtitle E of the Internal Revenue Code or Chapter 4301. or 4305. of the Revised Code;

(t) Receipts realized by a new motor vehicle dealer or used motor vehicle dealer, as defined in section 4517.01 of the Revised Code, from the sale or other transfer of a motor vehicle, as defined in that section, to another motor vehicle dealer for the purpose of resale by the transferee motor vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;

(u) Receipts from a financial institution described in division (E)(3) of this section for services provided to the financial institution in connection with the issuance, processing, servicing, and management of loans or credit accounts, if such financial institution and the recipient of such receipts have at least fifty per cent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;

(v) Receipts realized from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer;

(w) Funds received or used by a mortgage broker that is not a dealer in intangibles, other than fees or other consideration, pursuant to a table-funding mortgage loan or warehouse-lending mortgage loan. Terms used in division (F)(2)(w) of this section have the same meanings as in section 1322.01 of the Revised Code, except "mortgage broker" means a person assisting a buyer in obtaining a mortgage loan for a fee or other consideration paid by the buyer or a lender, or a person engaged in table-funding or warehouse-lending mortgage loans that are first lien mortgage loans.

(x) Property, money, and other amounts received by a professional employer organization, as defined in section 4125.01 of the Revised Code, from a client employer, as defined in that section, in excess of the administrative fee charged by the professional employer organization to the client employer;

(y) In the case of amounts retained as commissions by a permit holder under Chapter 3769. of the Revised Code, an amount equal to the amounts specified under that chapter that must be paid to or collected by the tax commissioner as a tax and the amounts specified under that chapter to be used as purse money;

(z) Qualifying distribution center receipts as determined under section 5751.40 of the Revised Code.

~~(i) For purposes of division (F)(2)(z) of this section:~~

~~(I) "Qualifying distribution center receipts" means receipts of a supplier from qualified property that is delivered to a qualified distribution center, multiplied by a quantity that equals one minus the Ohio delivery percentage. If the qualified distribution center is a refining facility, "supplier" includes all dealers, brokers, processors, sellers, vendors, cosigners, and distributors of qualified property.~~

~~(II) "Qualified property" means tangible personal property delivered to a qualified distribution center that is shipped to that qualified distribution center solely for further shipping by the qualified distribution center to another location in this state or elsewhere or, in the case of gold, silver, platinum, or palladium delivered to a refining facility solely for refining to a grade and fineness acceptable for delivery to a registered commodities exchange. "Further shipping" includes storing and repackaging property into smaller or larger bundles, so long as the property is not subject to further manufacturing or processing. "Refining" is limited to extracting impurities from gold, silver, platinum, or palladium through smelting or some other process at a refining facility.~~

~~(III) "Qualified distribution center" means a warehouse, a facility similar to a warehouse, or a refining facility in this state that, for the qualifying year, is operated by a person that is not part of a combined taxpayer group and that has a qualifying certificate. All warehouses or facilities similar to warehouses that are operated by persons in the same taxpayer group and that are located within one mile of each other shall be treated as one qualified distribution center. All refining facilities that are operated by persons in the same taxpayer group and that are located in the same or adjacent counties may be treated as one qualified distribution center.~~

~~(IV) "Qualifying year" means the calendar year to which the qualifying certificate applies.~~

~~(V) "Qualifying period" means the period of the first day of July of the second year preceding the qualifying year through the thirtieth day of June of the year preceding the qualifying year.~~

~~(VI) "Qualifying certificate" means the certificate issued by the tax commissioner after the operator of a distribution center files an annual application with the commissioner. The application~~

~~and annual fee shall be filed and paid for each qualified distribution center on or before the first day of September before the qualifying year or within forty-five days after the distribution center opens, whichever is later.~~

~~The applicant must substantiate to the commissioner's satisfaction that, for the qualifying period, all persons operating the distribution center have more than fifty per cent of the cost of the qualified property shipped to a location such that it would be sitused outside this state under the provisions of division (E) of section 5751.033 of the Revised Code. The applicant must also substantiate that the distribution center cumulatively had costs from its suppliers equal to or exceeding five hundred million dollars during the qualifying period. (For purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.) The commissioner may require the applicant to have an independent certified public accountant certify that the calculation of the minimum thresholds required for a qualified distribution center by the operator of a distribution center has been made in accordance with generally accepted accounting principles. The commissioner shall issue or deny the issuance of a certificate within sixty days after the receipt of the application. A denial is subject to appeal under section 5717.02 of the Revised Code. If the operator files a timely appeal under section 5717.02 of the Revised Code, the operator shall be granted a qualifying certificate effective for the remainder of the qualifying year or until the appeal is finalized, whichever is earlier. If the operator does not prevail in the appeal, the operator shall pay the ineligible operator's supplier tax liability.~~

~~(VII) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period.~~

~~(VIII) "Refining facility" means one or more buildings located in a county in the Appalachian region of this state as defined by section 107.21 of the Revised Code and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fineness acceptable for delivery to a registered commodities exchange.~~

~~(IX) "Registered commodities exchange" means a board of trade, such as New York mercantile exchange, inc. or commodity exchange, inc., designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended.~~

~~(X) "Ineligible operator's supplier tax liability" means an amount equal to the tax liability of all suppliers of a distribution center had the distribution center not been issued a qualifying certificate for the qualifying year. Ineligible operator's supplier tax liability shall not include interest or penalties. The tax commissioner shall determine an ineligible operator's supplier tax liability based on information that the commissioner may request from the operator of the distribution center. An operator shall provide a list of all suppliers of the distribution center and the corresponding costs of qualified property for the qualifying year at issue within sixty days of a request by the commissioner under this division.~~

~~(ii)(I) If the distribution center is new and was not open for the entire qualifying period, the operator of the distribution center may request that the commissioner grant a qualifying certificate. If the certificate is granted and it is later determined that more than fifty per cent of the qualified~~

~~property during that year was not shipped to a location such that it would be sitused outside of this state under the provisions of division (E) of section 5751.033 of the Revised Code or if it is later determined that the person that operates the distribution center had average monthly costs from its suppliers of less than forty million dollars during that year, then the operator of the distribution center shall pay the ineligible operator's supplier tax liability. (For purposes of division (F)(2)(z)(ii) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.)~~

~~(II) The commissioner may grant a qualifying certificate to a distribution center that does not qualify as a qualified distribution center for an entire qualifying period if the operator of the distribution center demonstrates that the business operations of the distribution center have changed or will change such that the distribution center will qualify as a qualified distribution center within thirty-six months after the date the operator first applies for a certificate. If, at the end of that thirty-six-month period, the business operations of the distribution center have not changed such that the distribution center qualifies as a qualified distribution center, the operator of the distribution center shall pay the ineligible operator's supplier tax liability for each year that the distribution center received a certificate but did not qualify as a qualified distribution center. For each year the distribution center receives a certificate under division (F)(2)(z)(ii)(II) of this section, the distribution center shall pay all applicable fees required under division (F)(2)(z) of this section and shall submit an updated business plan showing the progress the distribution center made toward qualifying as a qualified distribution center during the preceding year.~~

~~(III) An operator may appeal a determination under division (F)(2)(z)(ii)(I) or (II) of this section that the ineligible operator is liable for the operator's supplier tax liability as a result of not qualifying as a qualified distribution center, as provided in section 5717.02 of the Revised Code.~~

~~(iii) When filing an application for a qualifying certificate under division (F)(2)(z)(i)(VI) of this section, the operator of a qualified distribution center also shall provide documentation, as the commissioner requires, for the commissioner to ascertain the Ohio delivery percentage. The commissioner, upon issuing the qualifying certificate, also shall certify the Ohio delivery percentage. The operator of the qualified distribution center may appeal the commissioner's certification of the Ohio delivery percentage in the same manner as an appeal is taken from the denial of a qualifying certificate under division (F)(2)(z)(i)(VI) of this section.~~

~~(iv)(I) In the case where the distribution center is new and not open for the entire qualifying period, the operator shall make a good faith estimate of an Ohio delivery percentage for use by suppliers in their reports of taxable gross receipts for the remainder of the qualifying period. The operator of the facility shall disclose to the suppliers that such Ohio delivery percentage is an estimate and is subject to recalculation. By the due date of the next application for a qualifying certificate, the operator shall determine the actual Ohio delivery percentage for the estimated qualifying period and proceed as provided in division (F)(2)(z)(iii) of this section with respect to the calculation and recalculation of the Ohio delivery percentage. The supplier is required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed.~~

~~(II) The operator of a distribution center that receives a qualifying certificate under division (F)(2)(z)(ii)(II) of this section shall make a good faith estimate of the Ohio delivery percentage that the operator estimates will apply to the distribution center at the end of the thirty-six-month period after the operator first applied for a qualifying certificate under that division. The result of the estimate shall be multiplied by a factor of one and seventy-five one-hundredths. The product of that calculation shall be the Ohio delivery percentage used by suppliers in their reports of taxable gross receipts for each qualifying year that the distribution center receives a qualifying certificate under division (F)(2)(z)(ii)(II) of this section, except that, if the product is less than five per cent, the Ohio delivery percentage used shall be five per cent and that, if the product exceeds forty-nine per cent, the Ohio delivery percentage used shall be forty-nine per cent.~~

~~(v) Qualifying certificates and Ohio delivery percentages issued by the commissioner shall be open to public inspection and shall be timely published by the commissioner. A supplier relying in good faith on a certificate issued under this division shall not be subject to tax on the qualifying distribution center receipts under division (F)(2)(z) of this section. An operator receiving a qualifying certificate is liable for the ineligible operator's supplier tax liability for each year the operator received a certificate but did not qualify as a qualified distribution center.~~

~~(vi) The annual fee for a qualifying certificate shall be one hundred thousand dollars for each qualified distribution center. If a qualifying certificate is not issued, the annual fee is subject to refund after the exhaustion of all appeals provided for in division (F)(2)(z)(i)(VI) of this section. The first one hundred thousand dollars of the annual application fees collected each calendar year shall be credited to the revenue enhancement fund. The remainder of the annual application fees collected shall be distributed in the same manner required under section 5751.20 of the Revised Code.~~

~~(vii) The tax commissioner may require that adequate security be posted by the operator of the distribution center on appeal when the commissioner disagrees that the applicant has met the minimum thresholds for a qualified distribution center as set forth in division (F)(2)(z) of this section.~~

(aa) Receipts of an employer from payroll deductions relating to the reimbursement of the employer for advancing moneys to an unrelated third party on an employee's behalf;

(bb) Cash discounts allowed and taken;

(cc) Returns and allowances;

(dd) Bad debts from receipts on the basis of which the tax imposed by this chapter was paid in a prior quarterly tax payment period. For the purpose of this division, "bad debts" means any debts that have become worthless or uncollectible between the preceding and current quarterly tax payment periods, have been uncollected for at least six months, and that may be claimed as a deduction under section 166 of the Internal Revenue Code and the regulations adopted under that section, or that could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" does not include repossessed property, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered;

(ee) Any amount realized from the sale of an account receivable to the extent the receipts from the underlying transaction giving rise to the account receivable were included in the gross receipts of the taxpayer;

(ff) Any receipts directly attributed to a transfer agreement or to the enterprise transferred under that agreement under section 4313.02 of the Revised Code.

(gg)~~(i) As used in this division:~~

~~(I) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified by the tax commissioner under division (F)(2)(gg)(ii) of this section. "Qualified uranium receipts" does not include any receipts with a situs in this state outside a uranium enrichment zone certified by the tax commissioner under division (F)(2)(gg)(ii) of this section.~~

~~(II) "Uranium enrichment zone" means all real property that is part of a uranium enrichment facility licensed by the United States nuclear regulatory commission and that was or is owned or controlled by the United States department of energy or its successor.~~

~~(ii) Any person that owns, leases, or operates real or tangible personal property constituting or located within a uranium enrichment zone may apply to the tax commissioner to have the uranium enrichment zone certified for the purpose of excluding qualified uranium receipts under division (F)(2)(gg) of this section. The application shall include such information that the tax commissioner prescribes. Within sixty days after receiving the application, the tax commissioner shall certify the zone for that purpose if the commissioner determines that the property qualifies as a uranium enrichment zone as defined in division (F)(2)(gg) of this section, or, if the tax commissioner determines that the property does not qualify, the commissioner shall deny the application or request additional information from the applicant. If the tax commissioner denies an application, the commissioner shall state the reasons for the denial. The applicant may appeal the denial of an application to the board of tax appeals pursuant to section 5717.02 of the Revised Code. If the applicant files a timely appeal, the tax commissioner shall conditionally certify the applicant's property. The conditional certification shall expire when all of the applicant's appeals are exhausted. Until final resolution of the appeal, the applicant shall retain the applicant's records in accordance with section 5751.12 of the Revised Code, notwithstanding any time limit on the preservation of records under that section~~Qualified uranium receipts as determined under section 5751.41 of the Revised Code.

(hh) In the case of amounts collected by a licensed casino operator from casino gaming, amounts in excess of the casino operator's gross casino revenue. In this division, "casino operator" and "casino gaming" have the meanings defined in section 3772.01 of the Revised Code, and "gross casino revenue" has the meaning defined in section 5753.01 of the Revised Code.

(ii) Receipts realized from the sale of agricultural commodities by an agricultural commodity handler, both as defined in section 926.01 of the Revised Code, that is licensed by the director of agriculture to handle agricultural commodities in this state.

(jj) Qualifying integrated supply chain receipts as determined under section 5751.42 of the Revised Code.

~~As used in division (F)(2)(jj) of this section:~~

~~(i) "Qualifying integrated supply chain receipts" means receipts of a qualified integrated supply chain vendor from the sale of qualified property delivered to, or integrated supply chain services provided to, another qualified integrated supply chain vendor or to a retailer that is a member of the integrated supply chain. "Qualifying integrated supply chain receipts" does not~~

include receipts of a person that is not a qualified integrated supply chain vendor from the sale of raw materials to a member of an integrated supply chain, or receipts of a member of an integrated supply chain from the sale of qualified property or integrated supply chain services to a person that is not a member of the integrated supply chain.

(ii) "Qualified property" means any of the following:

(I) Component parts used to hold, contain, package, or dispense qualified products, excluding equipment;

(II) Work-in-process inventory that will become, comprise, or form a component part of a qualified product capable of being sold at retail, excluding equipment, machinery, furniture, and fixtures;

(III) Finished goods inventory that is a qualified product capable of being sold at retail in the inventory's present form.

(iii) "Qualified integrated supply chain vendor" means a person that is a member of an integrated supply chain and that provides integrated supply chain services within a qualified integrated supply chain district to a retailer that is a member of the integrated supply chain or to another qualified integrated supply chain vendor that is located within the same such district as the person but does not share a common owner with that person.

(iv) "Qualified product" means a personal care, health, or beauty product or an aromatic product, including a candle. "Qualified product" does not include a drug that may be dispensed only pursuant to a prescription, durable medical equipment, mobility enhancing equipment, or a prosthetic device, as those terms are defined in section 5739.01 of the Revised Code.

(v) "Integrated supply chain" means two or more qualified integrated supply chain vendors certified on the most recent list certified to the tax commissioner under this division that systematically collaborate and coordinate business operations with a retailer on the flow of tangible personal property from material sourcing through manufacturing, assembly, packaging, and delivery to the retailer to improve long-term financial performance of each vendor and the supply chain that includes the retailer.

For the purpose of the certification required under this division, the reporting person for each retailer, on or before the first day of October of each year, shall certify to the tax commissioner a list of the qualified integrated supply chain vendors providing or receiving integrated supply chain services within a qualified integrated supply chain district for the ensuing calendar year. On or before the following first day of November, the commissioner shall issue a certificate to the retailer and to each vendor certified to the commissioner on that list. The certificate shall include the names of the retailer and of the qualified integrated supply chain vendors.

The retailer shall notify the commissioner of any changes to the list, including additions to or subtractions from the list or changes in the name or legal entity of vendors certified on the list, within sixty days after the date the retailer becomes aware of the change. Within thirty days after receiving that notification, the commissioner shall issue a revised certificate to the retailer and to each vendor certified on the list. The revised certificate shall include the effective date of the change.

Each recipient of a certificate issued pursuant to this division shall maintain a copy of the certificate for four years from the date the certificate was received.

(vi) "Integrated supply chain services" means procuring raw materials or manufacturing,

~~processing, refining, assembling, packaging, or repackaging tangible personal property that will become finished goods inventory capable of being sold at retail by a retailer that is a member of an integrated supply chain.~~

~~(vii) "Retailer" means a person primarily engaged in making retail sales and any member of that person's consolidated elected taxpayer group or combined taxpayer group, whether or not that member is primarily engaged in making retail sales.~~

~~(viii) "Qualified integrated supply chain district" means the parcel or parcels of land from which a retailer's integrated supply chain that existed on September 29, 2015, provides or receives integrated supply chain services, and to which all of the following apply:~~

~~(I) The parcel or parcels are located wholly in a county having a population of greater than one hundred sixty-five thousand but less than one hundred seventy thousand based on the 2010 federal decennial census.~~

~~(II) The parcel or parcels are located wholly in the corporate limits of a municipal corporation with a population greater than seven thousand five hundred and less than eight thousand based on the 2010 federal decennial census that is partly located in the county described in division (F)(2)(jj)(viii)(I) of this section, as those corporate limits existed on September 29, 2015.~~

~~(III) The aggregate acreage of the parcel or parcels equals or exceeds one hundred acres.~~

(kk) In the case of a railroad company described in division (D)(9) of section 5727.01 of the Revised Code that purchases dyed diesel fuel directly from a supplier as defined by section 5736.01 of the Revised Code, an amount equal to the product of the number of gallons of dyed diesel fuel purchased directly from such a supplier multiplied by the average wholesale price for a gallon of diesel fuel as determined under section 5736.02 of the Revised Code for the period during which the fuel was purchased multiplied by a fraction, the numerator of which equals the rate of tax levied by section 5736.02 of the Revised Code less the rate of tax computed in section 5751.03 of the Revised Code, and the denominator of which equals the rate of tax computed in section 5751.03 of the Revised Code.

(ll) Receipts realized by an out-of-state disaster business from disaster work conducted in this state during a disaster response period pursuant to a qualifying solicitation received by the business. Terms used in division (F)(2)(ll) of this section have the same meanings as in section 5703.94 of the Revised Code.

(mm) Any receipts for which the tax imposed by this chapter is prohibited by the constitution or laws of the United States or the constitution of this state.

(3) In the case of a taxpayer when acting as a real estate broker, "gross receipts" includes only the portion of any fee for the service of a real estate broker, or service of a real estate salesperson associated with that broker, that is retained by the broker and not paid to an associated real estate salesperson or another real estate broker. For the purposes of this division, "real estate broker" and "real estate salesperson" have the same meanings as in section 4735.01 of the Revised Code.

(4) A taxpayer's method of accounting for gross receipts for a tax period shall be the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal taxable year that includes the tax period. If a taxpayer's method of accounting for federal income tax purposes changes, its method of accounting for gross receipts under this chapter shall be changed accordingly.

(G) "Taxable gross receipts" means gross receipts sitused to this state under section 5751.033 of the Revised Code.

(H) A person has "substantial nexus with this state" if any of the following applies. The person:

(1) Owns or uses a part or all of its capital in this state;

(2) Holds a certificate of compliance with the laws of this state authorizing the person to do business in this state;

(3) Has bright-line presence in this state;

(4) Otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this chapter under the Constitution of the United States.

(I) A person has "bright-line presence" in this state for a reporting period and for the remaining portion of the calendar year if any of the following applies. The person:

(1) Has at any time during the calendar year property in this state with an aggregate value of at least fifty thousand dollars. For the purpose of division (I)(1) of this section, owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(2) Has during the calendar year payroll in this state of at least fifty thousand dollars. Payroll in this state includes all of the following:

(a) Any amount subject to withholding by the person under section 5747.06 of the Revised Code;

(b) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(c) Any amount the person pays for services performed in this state on its behalf by another.

(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.

(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.

(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.

(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.

(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.

(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.

(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.

(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.

(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter.

(P) "Agent" means a person authorized by another person to act on its behalf to undertake a transaction for the other, including any of the following:

(1) A person receiving a fee to sell financial instruments;

(2) A person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person;

(3) A person issuing licenses and permits under section 1533.13 of the Revised Code;

(4) A lottery sales agent holding a valid license issued under section 3770.05 of the Revised Code;

(5) A person acting as an agent of the division of liquor control under section 4301.17 of the Revised Code.

(Q) "Received" includes amounts accrued under the accrual method of accounting.

(R) "Reporting person" means a person in a consolidated elected taxpayer or combined taxpayer group that is designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under this chapter, or, for the purposes of section 5751.04 of the Revised Code, a separate taxpayer that is not a member of such a group.

Sec. 5751.08. (A) An application for refund to the taxpayer of the amount of taxes imposed under this chapter that are overpaid, paid illegally or erroneously, or paid on any illegal or erroneous assessment shall be filed by the reporting person with the tax commissioner, on the form prescribed by the commissioner, within four years after the date of the illegal or erroneous payment of the tax, or within any additional period allowed under division (F) of section 5751.09 of the Revised Code. The applicant shall provide the amount of the requested refund along with the claimed reasons for, and documentation to support, the issuance of a refund.

(B) On the filing of the refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created under section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(C) Interest on a refund applied for under this section, computed at the rate provided for in section 5703.47 of the Revised Code, shall be allowed from the later of the date the tax was paid or when the tax payment was due.

(D) A calendar quarter taxpayer with more than one million dollars in taxable gross receipts in a calendar year other than calendar year 2005 and that is not able to exclude one million dollars in taxable gross receipts because of the operation of the taxpayer's business in that calendar year may file for a refund under this section to obtain the full exclusion of one million dollars in taxable gross receipts for that calendar year.

(E) Except as provided in section 5751.081 of the Revised Code, the tax commissioner may, with the consent of the taxpayer, provide for the crediting against tax due for a tax ~~year~~ period the amount of any refund due the taxpayer under this chapter for a preceding tax ~~year~~ period.

Sec. 5751.09. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any person that fails to file a return or pay any tax as

required by this chapter. The commissioner shall give the person assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on the manner in which to petition for reassessment and request a hearing with respect to the petition. The commissioner shall send any assessments against consolidated elected taxpayer and combined taxpayer groups under section 5751.011 or 5751.012 of the Revised Code to the taxpayer's ~~"~~reporting person~~" as defined under division (R) of section 5751.01 of the Revised Code~~. The reporting person shall notify all members of the group of the assessment and all outstanding taxes, interest, and penalties for which the assessment is issued.

(B) Unless the person assessed, within sixty days after service of the notice of assessment, files with the tax commissioner, either personally or by certified mail, a written petition signed by the person or the person's authorized agent having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the person assessed to the treasurer of state. The petition shall indicate the objections of the person assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination.

If a petition for reassessment has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C)(1) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the person resides or has its principal place of business in this state, or in the office of the clerk of court of common pleas of Franklin county.

(2) Immediately upon the filing of the entry, the clerk shall enter judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled, "special judgments for the commercial activity tax" and shall have the same effect as other judgments. Execution shall issue upon the judgment at the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

(3) If the assessment is not paid in its entirety within sixty days after the day the assessment was issued, the portion of the assessment consisting of tax due shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid or until it is certified to the attorney general for collection under section 131.02 of the Revised Code, whichever comes first. If the unpaid portion of the assessment is certified to the attorney general for collection, the entire unpaid portion of the assessment shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the date of certification until the date it is paid in its entirety. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy

assessment shall be served on the person assessed or the person's authorized agent in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(E) The tax commissioner shall immediately forward to the treasurer of state all amounts the commissioner receives under this section, and such amounts shall be considered as revenue arising from the tax imposed under this chapter.

(F) Except as otherwise provided in this division, no assessment shall be made or issued against a taxpayer for the tax imposed under this chapter more than four years after the due date for the filing of the return for the tax period for which the tax was reported, or more than four years after the return for the tax period was filed, whichever is later. The time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension or enter into an agreement waiving or extending the time limit. Any such extension shall extend the four-year time limit in division ~~(B)~~ (A) of section 5751.08 of the Revised Code for the same period of time. Nothing in this division bars an assessment against a taxpayer that fails to file a return required by this chapter or that files a fraudulent return.

(G) If the tax commissioner possesses information that indicates that the amount of tax a taxpayer is required to pay under this chapter exceeds the amount the taxpayer paid, the tax commissioner may audit a sample of the taxpayer's gross receipts over a representative period of time to ascertain the amount of tax due, and may issue an assessment based on the audit. The tax commissioner shall make a good faith effort to reach agreement with the taxpayer in selecting a representative sample. The tax commissioner may apply a sampling method only if the commissioner has prescribed the method by rule.

(H) If the whereabouts of a person subject to this chapter is not known to the tax commissioner, the commissioner shall follow the procedures under section 5703.37 of the Revised Code.

Sec. 5751.40. (A) As used in this section and division (F)(2)(z) of section 5751.01 of the Revised Code:

(1) "Qualifying distribution center receipts" means receipts of a supplier from qualified property that is delivered to a qualified distribution center, multiplied by a quantity that equals one minus the Ohio delivery percentage. If the qualified distribution center is a refining facility, "supplier" includes all dealers, brokers, processors, sellers, vendors, cosigners, and distributors of qualified property.

(2) "Qualified property" means tangible personal property delivered to a qualified distribution center that is shipped to that qualified distribution center solely for further shipping by the qualified distribution center to another location in this state or elsewhere or, in the case of gold, silver, platinum, or palladium delivered to a refining facility solely for refining to a grade and fineness acceptable for delivery to a registered commodities exchange. "Further shipping" includes storing and repackaging property into smaller or larger bundles, so long as the property is not subject to

further manufacturing or processing. "Refining" is limited to extracting impurities from gold, silver, platinum, or palladium through smelting or some other process at a refining facility.

(3) "Qualified distribution center" means a warehouse, a facility similar to a warehouse, or a refining facility in this state that, for the qualifying year, is operated by a person that is not part of a combined taxpayer group and that has a qualifying certificate. All warehouses or facilities similar to warehouses that are operated by persons in the same taxpayer group and that are located within one mile of each other shall be treated as one qualified distribution center. All refining facilities that are operated by persons in the same taxpayer group and that are located in the same or adjacent counties may be treated as one qualified distribution center.

(4) "Qualifying year" means the calendar year to which the qualifying certificate applies.

(5) "Qualifying period" means the period of the first day of July of the second year preceding the qualifying year through the thirtieth day of June of the year preceding the qualifying year.

(6) "Qualifying certificate" means the certificate issued by the tax commissioner after the operator of a distribution center files an annual application with the commissioner under division (B) of this section.

(7) "Ohio delivery percentage" means the proportion of the total property delivered to a destination inside Ohio from the qualified distribution center during the qualifying period compared with total deliveries from such distribution center everywhere during the qualifying period.

(8) "Refining facility" means one or more buildings located in a county in the Appalachian region of this state as defined by section 107.21 of the Revised Code and utilized for refining or smelting gold, silver, platinum, or palladium to a grade and fineness acceptable for delivery to a registered commodities exchange.

(9) "Registered commodities exchange" means a board of trade, such as New York mercantile exchange, inc. or commodity exchange, inc., designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended.

(10) "Ineligible operator's supplier tax liability" means an amount equal to the tax liability of all suppliers of a distribution center had the distribution center not been issued a qualifying certificate for the qualifying year. Ineligible operator's supplier tax liability shall not include interest or penalties.

(B) For purposes of division (B) of this section, "supplier" excludes any person that is part of the consolidated elected taxpayer group, if applicable, of the operator of the qualified distribution center.

(1) An application for a qualifying certificate to be a qualified distribution center shall be filed, and an annual fee paid, for each qualified distribution center on or before the first day of September before the qualifying year or within forty-five days after the distribution center opens, whichever is later. The applicant must substantiate to the commissioner's satisfaction that, for the qualifying period, all persons operating the distribution center have more than fifty per cent of the cost of the qualified property shipped to a location such that it would be sitused outside this state under the provisions of division (E) of section 5751.033 of the Revised Code. The applicant must also substantiate that the distribution center cumulatively had costs from its suppliers equal to or exceeding five hundred million dollars during the qualifying period.

The commissioner may require an applicant to have an independent certified public

accountant certify that the calculation of the minimum thresholds required for a qualified distribution center by the operator of a distribution center has been made in accordance with generally accepted accounting principles. The commissioner shall issue or deny the issuance of a certificate within sixty days after the receipt of the application. A denial is subject to appeal under section 5717.02 of the Revised Code. If the operator files a timely appeal under section 5717.02 of the Revised Code, the operator shall be granted a qualifying certificate effective for the remainder of the qualifying year or until the appeal is finalized, whichever is earlier. If the operator does not prevail in the appeal, the operator shall pay the ineligible operator's supplier tax liability.

(2) If the distribution center is new and was not open for the entire qualifying period, the operator of the distribution center may request that the commissioner grant a qualifying certificate. If the certificate is granted and it is later determined that more than fifty per cent of the qualified property during that year was not shipped to a location such that it would be situsedoutside of this state under the provisions of division (E) of section 5751.033 of the Revised Code or if it is later determined that the person that operates the distribution center had average monthly costs from its suppliers of less than forty million dollars during that year, then the operator of the distribution center shall pay the ineligible operator's supplier tax liability.

(3) The commissioner may grant a qualifying certificate to a distribution center that does not qualify as a qualified distribution center for an entire qualifying period if the operator of the distribution center demonstrates that the business operations of the distribution center have changed or will change such that the distribution center will qualify as a qualified distribution center within thirty-six months after the date the operator first applies for a certificate. If, at the end of that thirty-six-month period, the business operations of the distribution center have not changed such that the distribution center qualifies as a qualified distribution center, the operator of the distribution center shall pay the ineligible operator's supplier tax liability for each year that the distribution center received a certificate but did not qualify as a qualified distribution center. For each year the distribution center receives a certificate under division (B)(3) of this section, the distribution center shall pay all applicable fees required under this section and shall submit an updated business plan showing the progress the distribution center made toward qualifying as a qualified distribution center during the preceding year.

(4) An operator may appeal a determination under division (B)(1) or (2) of this section that the ineligible operator is liable for the operator's supplier tax liability as a result of not qualifying as a qualified distribution center, as provided in section 5717.02 of the Revised Code.

(C)(1) When filing an application for a qualifying certificate under division (B)(1) of this section, the operator of a qualified distribution center also shall provide documentation, as the commissioner requires, for the commissioner to ascertain the Ohio delivery percentage. The commissioner, upon issuing the qualifying certificate, also shall certify the Ohio delivery percentage. The operator of the qualified distribution center may appeal the commissioner's certification of the Ohio delivery percentage in the same manner as an appeal is taken from the denial of a qualifying certificate under division (B)(1) of this section.

(2) In the case where the distribution center is new and not open for the entire qualifying period, the operator shall make a good faith estimate of an Ohio delivery percentage for use by suppliers in their reports of taxable gross receipts for the remainder of the qualifying period. The

operator of the facility shall disclose to the suppliers that such Ohio delivery percentage is an estimate and is subject to recalculation. By the due date of the next application for a qualifying certificate, the operator shall determine the actual Ohio delivery percentage for the estimated qualifying period and proceed as provided in division (C)(1) of this section with respect to the calculation and recalculation of the Ohio delivery percentage. The supplier is required to file, within sixty days after receiving notice from the operator of the qualified distribution center, amended reports for the impacted calendar quarter or quarters or calendar year, whichever the case may be. Any additional tax liability or tax overpayment shall be subject to interest but shall not be subject to the imposition of any penalty so long as the amended returns are timely filed.

(3) The operator of a distribution center that receives a qualifying certificate under division (B)(3) of this section shall make a good faith estimate of the Ohio delivery percentage that the operator estimates will apply to the distribution center at the end of the thirty-six-month period after the operator first applied for a qualifying certificate under that division. The result of the estimate shall be multiplied by a factor of one and seventy-five one-hundredths. The product of that calculation shall be the Ohio delivery percentage used by suppliers in their reports of taxable gross receipts for each qualifying year that the distribution center receives a qualifying certificate under division (B)(3) of this section, except that, if the product is less than five per cent, the Ohio delivery percentage used shall be five per cent and that, if the product exceeds forty-nine per cent, the Ohio delivery percentage used shall be forty-nine per cent.

(D) Qualifying certificates and Ohio delivery percentages issued by the commissioner shall be open to public inspection and shall be timely published by the commissioner. A supplier relying in good faith on a certificate issued under this section shall not be subject to tax on the qualifying distribution center receipts under this section and division (F)(2)(z) of section 5751.01 of the Revised Code. An operator receiving a qualifying certificate is liable for the ineligible operator's supplier tax liability for each year the operator received a certificate but did not qualify as a qualified distribution center.

(E) The tax commissioner shall determine an ineligible operator's supplier tax liability based on information that the commissioner may request from the operator of the distribution center. An operator shall provide a list of all suppliers of the distribution center and the corresponding costs of qualified property for the qualifying year at issue within sixty days of a request by the commissioner under this division.

(F) The annual fee for a qualifying certificate shall be one hundred thousand dollars for each qualified distribution center. If a qualifying certificate is not issued, the annual fee is subject to refund after the exhaustion of all appeals provided for in division (B)(1) of this section. The first one hundred thousand dollars of the annual application fees collected each calendar year shall be credited to the revenue enhancement fund. The remainder of the annual application fees collected shall be distributed in the same manner required under section 5751.20 of the Revised Code.

(G) The tax commissioner may require that adequate security be posted by the operator of the distribution center on appeal when the commissioner disagrees that the applicant has met the minimum thresholds for a qualified distribution center as set forth in this section.

Sec. 5751.41. (A) As used in this section and division (F)(2)(gg) of section 5751.01 of the Revised Code:

(1) "Qualified uranium receipts" means receipts from the sale, exchange, lease, loan, production, processing, or other disposition of uranium within a uranium enrichment zone certified by the tax commissioner under division (B) of this section. "Qualified uranium receipts" does not include any receipts with a situs in this state outside a uranium enrichment zone certified by the tax commissioner under that division.

(2) "Uranium enrichment zone" means all real property that is part of a uranium enrichment facility licensed by the United States nuclear regulatory commission and that was or is owned or controlled by the United States department of energy or its successor.

(B) Any person that owns, leases, or operates real or tangible personal property constituting or located within a uranium enrichment zone may apply to the tax commissioner to have the uranium enrichment zone certified for the purpose of excluding qualified uranium receipts under this section and division (F)(2)(gg) of section 5751.01 of the Revised Code. The application shall include such information that the tax commissioner prescribes. Within sixty days after receiving the application, the tax commissioner shall certify the zone for that purpose if the commissioner determines that the property qualifies as a uranium enrichment zone, or, if the tax commissioner determines that the property does not qualify, the commissioner shall deny the application or request additional information from the applicant. If the tax commissioner denies an application, the commissioner shall state the reasons for the denial. The applicant may appeal the denial of an application to the board of tax appeals pursuant to section 5717.02 of the Revised Code. If the applicant files a timely appeal, the tax commissioner shall conditionally certify the applicant's property. The conditional certification shall expire when all of the applicant's appeals are exhausted. Until final resolution of the appeal, the applicant shall retain the applicant's records in accordance with section 5751.12 of the Revised Code, notwithstanding any time limit on the preservation of records under that section.

Sec. 5751.42. (A) As used in this section and division (F)(2)(jj) of section 5751.01 of the Revised Code:

(1) "Qualifying integrated supply chain receipts" means receipts of a qualified integrated supply chain vendor from the sale of qualified property delivered to, or integrated supply chain services provided to, another qualified integrated supply chain vendor or to a retailer that is a member of the integrated supply chain. "Qualifying integrated supply chain receipts" does not include receipts of a person that is not a qualified integrated supply chain vendor from the sale of raw materials to a member of an integrated supply chain, or receipts of a member of an integrated supply chain from the sale of qualified property or integrated supply chain services to a person that is not a member of the integrated supply chain.

(2) "Qualified property" means any of the following:

(a) Component parts used to hold, contain, package, or dispense qualified products, excluding equipment.

(b) Work-in-process inventory that will become, comprise, or form a component part of a qualified product capable of being sold at retail, excluding equipment, machinery, furniture, and fixtures.

(c) Finished goods inventory that is a qualified product capable of being sold at retail in the inventory's present form.

(3) "Qualified integrated supply chain vendor" means a person that is a member of an

integrated supply chain and that provides integrated supply chain services within a qualified integrated supply chain district to a retailer that is a member of the integrated supply chain or to another qualified integrated supply chain vendor that is located within the same such district as the person but does not share a common owner with that person.

(4) "Qualified product" means a personal care, health, or beauty product or an aromatic product, including a candle. "Qualified product" does not include a drug that may be dispensed only pursuant to a prescription, durable medical equipment, mobility enhancing equipment, or a prosthetic device, as those terms are defined in section 5739.01 of the Revised Code.

(5) "Integrated supply chain" means two or more qualified integrated supply chain vendors certified on the most recent list certified to the tax commissioner under division (B) of this section that systematically collaborate and coordinate business operations with a retailer on the flow of tangible personal property from material sourcing through manufacturing, assembly, packaging, and delivery to the retailer to improve long-term financial performance of each vendor and the supply chain that includes the retailer.

(6) "Integrated supply chain services" means procuring raw materials or manufacturing, processing, refining, assembling, packaging, or repackaging tangible personal property that will become finished goods inventory capable of being sold at retail by a retailer that is a member of an integrated supply chain.

(7) "Retailer" means a person primarily engaged in making retail sales and any member of that person's consolidated elected taxpayer group or combined taxpayer group, whether or not that member is primarily engaged in making retail sales.

(8) "Qualified integrated supply chain district" means the parcel or parcels of land from which a retailer's integrated supply chain that existed on September 29, 2015, provides or receives integrated supply chain services, and to which all of the following apply:

(a) The parcel or parcels are located wholly in a county having a population of greater than one hundred sixty-five thousand but less than one hundred seventy thousand based on the 2010 federal decennial census.

(b) The parcel or parcels are located wholly in the corporate limits of a municipal corporation with a population greater than seven thousand five hundred and less than eight thousand based on the 2010 federal decennial census that is partly located in the county described in division (A)(8)(a) of this section, as those corporate limits existed on September 29, 2015.

(c) The aggregate acreage of the parcel or parcels equals or exceeds one hundred acres.

(B) For the purpose of the certification under division (A)(5) of this section, the reporting person for each retailer, on or before the first day of October of each year, shall certify to the tax commissioner a list of the qualified integrated supply chain vendors providing or receiving integrated supply chain services within a qualified integrated supply chain district for the ensuing calendar year. On or before the following first day of November, the commissioner shall issue a certificate to the retailer and to each vendor certified to the commissioner on that list. The certificate shall include the names of the retailer and of the qualified integrated supply chain vendors.

The retailer shall notify the commissioner of any changes to the list, including additions to or subtractions from the list or changes in the name or legal entity of vendors certified on the list, within sixty days after the date the retailer becomes aware of the change. Within thirty days after receiving

that notification, the commissioner shall issue a revised certificate to the retailer and to each vendor certified on the list. The revised certificate shall include the effective date of the change.

Each recipient of a certificate issued pursuant to this division shall maintain a copy of the certificate for four years from the date the certificate was received.

Sec. 5751.50. (A) For tax periods beginning on or after January 1, 2008, a refundable credit granted by the tax credit authority under section 122.17 or former division (B)(2) or (3) of section 122.171 of the Revised Code, as those divisions existed before September 29, 2015, the effective date of the amendment of this section by H.B. 64 of the 131st general assembly, may be claimed under this chapter in the order required under section 5751.98 of the Revised Code. For purposes of making tax payments under this chapter, taxes equal to the amount of the refundable credit shall be considered to be paid to this state on the first day of the tax period. A credit claimed in calendar year 2008 may not be applied against the tax otherwise due for a tax period beginning before July 1, 2008. The refundable credit shall not be claimed against the tax otherwise due for any tax period beginning after the date on which a relocation of employment positions occurs in violation of an agreement entered into under section 122.17 or 122.171 of the Revised Code.

(B) For tax periods beginning on or after January 1, 2008, a nonrefundable credit granted by the tax credit authority under division (B) of section 122.171 of the Revised Code may be claimed under this chapter in the order required under section 5751.98 of the Revised Code. A credit claimed in calendar year 2008 may not be applied against the tax otherwise due under this chapter for a tax period beginning before July 1, 2008. The credit shall not be claimed against the tax otherwise due for any tax period beginning after the date on which a relocation of employment positions occurs in violation of an agreement entered into under section 122.17 or 122.171 of the Revised Code. No credit shall be allowed under this chapter if the credit was available against the tax imposed by section 5733.06 or 5747.02 of the Revised Code, except to the extent the credit was not applied against such tax.

Sec. 5751.51. (A) As used in this section, "qualified research expenses" has the same meaning as in section 41 of the Internal Revenue Code.

(B)(1) For ~~tax periods~~ calendar years beginning on or after January 1, 2008, a nonrefundable credit may be claimed under this chapter equal to seven per cent of the excess of (a) qualified research expenses incurred in this state by the taxpayer in the ~~tax period~~ calendar year for which the credit is claimed over (b) the taxpayer's average annual qualified research expenses incurred in this state for the three preceding ~~tax periods~~ calendar years.

(2) The taxpayer shall claim the credit allowed under division (B)(1) of this section in the order required by section 5751.98 of the Revised Code. A credit claimed in ~~tax~~ calendar year 2008 may not be applied against the tax otherwise due under this chapter for a tax period beginning before July 1, 2008. Any credit amount in excess of the tax due under section 5751.03 of the Revised Code, after allowing for any other credits that precede the credit under this section in the order required under that section, may be carried forward for seven ~~tax~~ years, but the amount of the excess credit claimed against the tax for any tax period shall be deducted from the balance carried forward to the next tax period.

(3) No credit shall be allowed under this chapter if the credit was available against the tax imposed by section 5733.06 of the Revised Code, except to the extent the credit was not applied

against such tax.

Sec. 5751.98. (A) To provide a uniform procedure for calculating the amount of tax due under this chapter, a taxpayer shall claim any credits to which it is entitled in the following order:

~~(1)~~ The nonrefundable jobs retention credit under division (B) of section 5751.50 of the Revised Code;

~~(2)~~ The nonrefundable credit for qualified research expenses under division (B) of section 5751.51 of the Revised Code;

~~(3)~~ The nonrefundable credit for a borrower's qualified research and development loan payments under division (B) of section 5751.52 of the Revised Code;

~~(4)~~ The nonrefundable credit for calendar years 2010 to 2029 for unused net operating losses under division (B) of section 5751.53 of the Revised Code;

~~(5)~~ The refundable motion picture and broadway theatrical production credit under section 5751.54 of the Revised Code;

~~(6)~~ The refundable jobs creation credit or job retention credit under division (A) of section 5751.50 of the Revised Code;

~~(7)~~ The refundable credit for calendar year 2030 for unused net operating losses under division (C) of section 5751.53 of the Revised Code.

(B) For any credit except the refundable credits enumerated in this section, the amount of the credit for a tax period shall not exceed the tax due after allowing for any other credit that precedes it in the order required under this section. Any excess amount of a particular credit may be carried forward if authorized under the section creating the credit.

Sec. 5753.11. (A) As used in this section:

(1) "Public school district" means any city, local, exempted village, or joint vocational school district, community school established under Chapter 3314. of the Revised Code, STEM school established under Chapter 3326. of the Revised Code, or college-preparatory boarding school established under Chapter 3328. of the Revised Code. "Public school district" does not include any STEM school operated under section 3326.51 of the Revised Code.

(2) "Student population" means the number of students residing in a county who are enrolled in a public school district in grades kindergarten through twelve and the total number of preschool children with disabilities on the following dates:

(a) For the January distribution, the Friday of the first full school week in October;

(b) For the August distribution, the Friday of the first full school week in May.

(B) For the purpose of calculating student population, each public school district shall, twice annually, report to the department of education the students enrolled in the district on the days specified in division (A)(2) of this section. A student shall be considered to be enrolled in a public school district if the student is participating in education programs of the public school district and the public school district has not:

(1) Received documentation from a parent terminating enrollment of the student;

(2) Been provided documentation of a student's enrollment in another public or private school; or

(3) Ceased to offer education to the student.

If more than one public school district reports a student as enrolled, the department shall use

procedures adopted by the department for the reconciliation of enrollment to determine the district of enrollment for purposes of this section. In the case of the dual enrollment of a student in a joint vocational school district and another public school district, the student shall be included in the enrollments for both schools. If the valid school district or enrollment cannot be determined in time for the certification, the count of these students shall be divided equally between the reporting districts.

(C) The department of education shall certify to the department of taxation the student population for each county and the student population for each public school district located in whole or in part in the county on or before the thirtieth day of December, for the January distribution and on or before the thirtieth day of July, for the August distribution. A student shall be included in the school district enrollment for a county only if a student resides in that county. The location of each community school shall be the enrollment area required to be defined by the community school and its sponsor in accordance with division (A)(19) of section 3314.03 of the Revised Code, the location of each STEM ~~schools~~ school shall be any county in which its enrolled students reside, and the location of the college-preparatory boarding schools shall be the territory of the school district in which the college-preparatory school is located or the territory of any city, exempted village, or local school district that has agreed to be a participating district under section 3328.04 of the Revised Code.

The student population count certified by the department of education to the department of taxation is final and shall not be adjusted by future updates to the counts.

(D) Not later than the thirty-first day of January and the thirty-first day of August of each year, the tax commissioner shall distribute funds in the gross casino revenue county student fund to public school districts. The commissioner shall calculate the amount of funds to distribute to each public school district as follows:

(1) The commissioner shall calculate the proportional share of the funds attributable to each county by dividing the total student population certified for each county by the sum of the total student population certified in all counties statewide.

(2) The commissioner shall multiply the amount in division (D)(1) of this section by the total amount of funds in the gross casino revenue county student fund to obtain the share of funds for each county.

(3) The commissioner shall multiply the amount in division (D)(2) of this section by the quotient of the student population certified for each individual district located in the county divided by the sum of the student population certified for all public school districts located in the county.

The commissioner shall distribute to each public school district the amount so calculated for each district.

SECTION 2. That existing sections 122.075, 125.831, 131.45, 133.01, 133.06, 133.07, 133.18, 135.142, 305.31, 306.322, 307.671, 307.672, 307.674, 307.678, 307.695, 319.301, 321.03, 321.20, 323.154, 323.155, 351.01, 351.03, 351.141, 718.01, 718.021, 929.01, 1545.041, 1545.21, 1711.15, 1711.16, 3316.03, 3316.06, 3317.01, 4301.20, 4582.024, 4582.26, 4582.56, 4723.43, 4729.01, 4761.17, 5104.31, 5701.08, 5701.11, 5701.12, 5703.04, 5703.211, 5703.54, 5703.94, 5703.95, 5705.03, 5705.13, 5705.19, 5705.195, 5705.213, 5705.252, 5705.29, 5705.315, 5705.34, 5705.35,

5705.36, 5705.49, 5709.201, 5709.43, 5709.48, 5709.53, 5709.61, 5709.80, 5709.85, 5709.93, 5713.03, 5713.30, 5713.351, 5715.13, 5715.36, 5721.06, 5721.191, 5721.39, 5725.98, 5726.50, 5726.98, 5727.02, 5727.11, 5727.23, 5727.32, 5727.33, 5727.80, 5727.83, 5727.84, 5729.98, 5733.042, 5733.05, 5733.052, 5733.055, 5733.40, 5733.98, 5735.026, 5735.06, 5739.01, 5739.011, 5739.02, 5739.021, 5739.028, 5739.03, 5739.034, 5739.08, 5739.09, 5739.21, 5740.02, 5743.05, 5743.08, 5743.33, 5743.65, 5745.14, 5747.01, 5747.011, 5747.012, 5747.013, 5747.02, 5747.058, 5747.061, 5747.07, 5747.082, 5747.11, 5747.231, 5747.41, 5747.51, 5747.52, 5747.55, 5747.98, 5748.08, 5748.09, 5751.01, 5751.08, 5751.09, 5751.50, 5751.51, 5751.98, and 5753.11 of the Revised Code are hereby repealed.

SECTION 3. That sections 901.13, 5705.211, 5727.87, 5733.46, 5739.105, 5747.75, and 5751.23 of the Revised Code are hereby repealed.

SECTION 4. That Section 757.40 of H.B. 166 of the 133rd General Assembly be amended to read as follows:

Sec. 757.40. (A) As used in this section:

(1) "Certificate owner" and "qualified rehabilitation expenditures" have the same meanings as in section 149.311 of the Revised Code.

(2) "Taxpayer," "tax period," "excluded person," "combined taxpayer," and "consolidated elected taxpayer," have the same meanings as in section 5751.01 of the Revised Code.

(3) "Pass-through entity" has the same meaning as in section 5733.04 of the Revised Code.

(B) A taxpayer that is the certificate owner of a rehabilitation tax credit certificate issued under section 149.311 of the Revised Code may claim a credit against the tax levied by section 5751.02 of the Revised Code for tax periods ending on or before June 30, 2021, provided that the taxpayer is unable to claim the credit under section 5725.151, 5725.34, 5726.52, 5729.17, or 5747.76 of the Revised Code.

The credit shall equal the lesser of twenty-five per cent of the dollar amount of the qualified rehabilitation expenditures indicated on the certificate or five million dollars. The credit shall be claimed for the calendar year specified in the certificate and after the credits authorized in ~~divisions (A)(1) to (4)~~ division (B) of section ~~5751.98~~ 5751.50, division (B) of section 5751.53, and sections 5751.51 and 5751.52 of the Revised Code, but before the credits authorized in ~~divisions (A)(5) to (7) of that~~ division (A) of section 5751.50, division (C) of section 5751.53, and section 5751.54 of the Revised Code.

If the credit allowed for any calendar year exceeds the tax otherwise due under section 5751.02 of the Revised Code, after allowing for any other credits preceding the credit in the order prescribed by this section, the excess shall be refunded to the taxpayer. However, if any amount of the credit is refunded, the sum of the amount refunded and the amount applied to reduce the tax otherwise due for that year shall not exceed three million dollars. The taxpayer may carry forward any balance of the credit in excess of the amount claimed for that year for not more than five calendar years after the calendar year specified in the certificate, and shall deduct any amount claimed in any such year from the amount claimed in an ensuing year.

A person that is an excluded person may file a return under section 5751.051 of the Revised Code for the purpose of claiming the credit authorized in this section.

If the certificate owner is a pass-through entity, the credit may not be allocated among the entity's owners in proportions or amounts as the owners mutually agree unless either the owners are part of the same combined or consolidated elected taxpayer as the pass-through entity or the director of development services issued the certificate in the name of the pass-through entity's owners in the agreed-upon proportions or amounts. If the credit is allocated among those owners, an owner may claim the credit authorized in this section only if that owner is a corporation or an association taxed as a corporation for federal income tax purposes and is not a corporation that has made an election under Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code.

The credit authorized in this section may be claimed only on the basis of a rehabilitation tax credit certificate with an effective date after December 31, 2013, but before June 30, 2021.

A person claiming a credit under this section shall retain the rehabilitation tax credit certificate for four years following the end of the latest calendar year in which the credit was applied, and shall make the certificate available for inspection by the tax commissioner upon request.

SECTION 5. That existing Section 757.40 of H.B. 166 of the 133rd General Assembly is hereby repealed.

SECTION 6. The amendment by this act of division (B)(56) of section 5739.02 of the Revised Code applies on and after April 1, 2020.

SECTION 7. Sections 1 to 6 of this act shall be known as the "Tax Code Streamlining and Correction Act."

SECTION 8. (A) For purposes of ensuring the supply of safe drinking water to the citizens of this state and pursuant to section 6109.04 of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, the Director of Environmental Protection may issue an order that does any of the following:

(1) Requires a public water system to restore service to any customer whose service was disconnected as a result of nonpayment of fees and charges;

(2) Requires a public water system to waive all fees for connection or reconnection to the public water system;

(3) Prohibits a public water system from disconnecting customers because of nonpayment of fees and charges.

(B) An order issued under division (A) of this section is deemed an order issued under Chapter 6109. of the Revised Code. As such, the order may be enforced in the same manner as any other order issued under that chapter. Such enforcement may include the imposition of administrative, civil, and criminal penalties authorized under Chapter 6109. of the Revised Code.

(C) An order issued under division (A) of this section is valid during the period of the emergency declared by Executive Order 2020-01D issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date.

SECTION 9. Notwithstanding section 5104.016 of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, the requirements of section 5104.033 of the Revised Code regarding the maximum number of children per child-care staff member and maximum group sizes are suspended.

SECTION 10. (A) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, the Director of Agriculture may exempt a school from regulation as a food processing establishment under section 3715.021 of the Revised Code if the school:

(1) Has been issued a food service operation license under Chapter 3717. of the Revised Code; and

(2) Is transporting food only for purposes of the Seamless Summer Option Program or the Summer Food Service Program administered by the United States Department of Agriculture.

(B) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, the Director of Agriculture may exempt an entity from regulation as a food processing establishment under section 3715.021 of the Revised Code if the entity:

(1) Has been issued a food service operation license under Chapter 3717. of the Revised Code; and

(2) Is transporting food only for purposes of the Summer Food Service Program administered by the United States Department of Agriculture.

SECTION 11. (A) As used in this section:

(1) "License" means any license, permit, certificate, commission, charter, registration, card, or other similar authority that is issued or conferred by a state agency, a political subdivision of this state, or an official of a political subdivision of this state.

(2) "Person" has the same meaning as in section 1.59 of the Revised Code.

(3) "State agency" means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government. "State agency" includes all of the following:

(a) The nonprofit corporation formed under section 187.01 of the Revised Code;

(b) The Public Employees Retirement Board, Board of Trustees of the Ohio Police and Fire Pension Fund, State Teachers Retirement Board, School Employees Retirement Board, and State Highway Patrol Retirement Board;

(c) A state institution of higher education as defined in section 3345.011 of the Revised Code.

(B) If a state agency is required by law to take action during the period of the emergency

declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date by which action is required to be taken in accordance with that law, the state agency shall take that action not later than the earlier of either ninety days after the date the emergency ends or December 1, 2020.

(C)(1) Except as provided in division (E) of this section, if a person is required by law to take action to maintain the validity of a license during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date by which action with respect to that license is required to be taken in accordance with that law, the person shall take that action not later than the sooner of either ninety days after the date the emergency ends or December 1, 2020.

(2) Except as provided in division (E) of this section, a license otherwise expiring pursuant to law during the period of the emergency declared by Executive Order 2020-01D, issued March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding the date on which the license expires in accordance with that law, remains valid until the earlier of either ninety days after the date the emergency ends or December 1, 2020, unless revoked, suspended, or otherwise subject to discipline or limitation under the applicable law for reasons other than delaying taking action to maintain the validity of the license in accordance with division (C)(1) of this section.

(D) Nothing in division (C) of this section limits the authority of a state agency, political subdivision, or official that issues a license to take disciplinary action under the applicable law against a person with respect to a license, provided that a state agency, political subdivision, or official shall not take disciplinary action against a person who delays in taking action to maintain the validity of the license in accordance with division (C)(1) of this section.

(E)(1) If a concealed handgun license has been issued to a person under section 2923.125 of the Revised Code and if the date on which that license was, or is, scheduled to expire falls during the period of emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, notwithstanding that date of scheduled expiration or any other provision of law to the contrary, the date on which that license was, or is, scheduled to expire is hereby extended to the sooner of either ninety days or December 1, 2020, with the ninety-day extension period commencing on that date of scheduled expiration.

(2) Division (E)(1) of this section applies with respect to a concealed handgun license that is described in that division even if the date of scheduled expiration of that license occurred prior to the effective date of this section. In such a case, the ninety-day extension period, if applicable, shall be considered to have commenced on that date of scheduled expiration, notwithstanding the fact that the date already has passed, and divisions (F) and (G) of this section apply regarding the license and the person to whom it was issued with respect to the entire applicable extension period, notwithstanding the fact that the date already has passed.

(F) If division (E)(1) of this section applies with respect to a concealed handgun license, during the extension period described in that division that is applicable to that license, both of the following apply:

(1) The license shall be valid for all purposes under the law of this state.

(2) The person to whom the license was issued shall be considered for all purposes under the law of this state to be a holder of a valid license to carry a concealed handgun.

(G) If division (E) of this section applies with respect to a concealed handgun license:

(1) The application of that division does not affect the operation of section 2923.128 of the Revised Code, during the applicable extension period described in that division or at any other time.

(2) The provisions of section 2923.128 of the Revised Code requiring the suspension or revocation of a concealed handgun license for specified conduct, or for a specified activity or factor, apply to the license with respect to which division (E) of this section applies and to the person to whom the license was issued, during the applicable extension period described in that division or at any other time.

(H) This section does not apply to any of the following:

(1) An offender who has violent offender database duties as defined in section 2903.41 of the Revised Code;

(2) An offender who has a duty to register under section 2909.15 of the Revised Code;

(3) An offender who has a duty to register under section 2950.04 or 2950.041 of the Revised Code.

(I) No cause of action accrues due to the delay of an action taken under division (B), (C), or (E) of this section.

(J) The General Assembly encourages any person to whom the extension of time described in division (C)(1) or (E) of this section applies to make all reasonable efforts, taking into consideration the detrimental risks of COVID-19 to the health and safety of the person and other individuals, to take action with respect to a license within the extension granted under that division before the extension elapses.

SECTION 12. (A) As used in this section:

"Hearing" means an administrative hearing, hearing as defined in section 119.01 of the Revised Code, or other hearing at which a person may present written or oral testimony on a matter before the public body.

"Public body" and "meeting" have the meanings defined in section 121.22 of the Revised Code.

(B) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of the emergency continues beyond that date, members of a public body may hold and attend meetings and may conduct and attend hearings by means of teleconference, video conference, or any other similar electronic technology and all of the following apply:

(1) Any resolution, rule, or formal action of any kind shall have the same effect as if it had occurred during an open meeting or hearing of the public body.

(2) Notwithstanding division (C) of section 121.22 of the Revised Code, members of a public body who attend meetings or hearings by means of teleconference, video conference, or any other similar electronic technology, shall be considered present as if in person at the meeting or hearing, shall be permitted to vote, and shall be counted for purposes of determining whether a quorum is present at the meeting or hearing.

(3) Public bodies shall provide notification of meetings and hearings held under this section to the public, to the media that have requested notification of a meeting, and to the parties required to be notified of a hearing, at least twenty-four hours in advance of the meeting or hearing by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted, except in the event of an emergency requiring immediate official action. In the event of an emergency, the public body shall immediately notify the news media that have requested notification or the parties required to be notified of a hearing of the time, place, and purpose of the meeting or hearing.

(4) The public body shall provide the public access to a meeting held under this section, and to any hearing held under this section that the public would otherwise be entitled to attend, commensurate with the method in which the meeting or hearing is being conducted, including, but not limited to, examples such as live-streaming by means of the internet, local radio, television, cable, or public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The public body shall ensure that the public can observe and hear the discussions and deliberations of all the members of the public body, whether the member is participating in person or electronically.

(C) When members of a public body conduct a hearing by means of teleconference, video conference, or any other similar electronic technology, the public body must establish a means, through the use of electronic equipment that is widely available to the general public, to converse with witnesses, and to receive documentary testimony and physical evidence.

(D) The authority granted in this section applies notwithstanding any conflicting provision of the Revised Code. Nothing in this section shall be construed to negate any provision of section 121.22 of the Revised Code, Chapter 119. of the Revised Code, or other section of the Revised Code that is not in conflict with this section.

(E) This section is effective during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, or until December 1, 2020, if the period of the emergency continues beyond that date.

SECTION 13. (A) As used in this section:

(1) "PERS retirant" and "other system retirant" have the same meanings as in section 145.38 of the Revised Code.

(2) "Public employer" has the same meaning as in section 145.01 of the Revised Code.

(B) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of emergency goes beyond that date, a PERS retirant or other system retirant who is employed by any of the following public employers shall not be required to forfeit the retirant's retirement allowance as described in division (B)(4) of section 145.38 of the Revised Code:

(1) The Department of Rehabilitation and Correction;

(2) The Department of Youth Services;

(3) The Department of Mental Health and Addiction Services;

(4) The Department of Veterans Services;

(5) The Department of Developmental Disabilities.

SECTION 14. (A) As used in this section, "Medicaid provider" has the same meaning as in section 5164.01 of the Revised Code.

(B) During the state of emergency due to COVID-19, declared by Executive Order 2020-01D, issued on March 9, 2020, or until December 1, 2020, whichever is earlier, the Medicaid Director may do any of the following:

(1) Classify certain Medicaid providers as COVID-19 community providers;

(2) Direct Medicaid payments to COVID-19 community providers from previously appropriated Medicaid funds;

(3) Request the Director of Budget and Management to designate additional funds related to the COVID-19 outbreak for Medicaid payments to COVID-19 community providers;

(4) Make Medicaid payments to COVID-19 community providers from funds designated under division (B)(3) of this section;

(5) Facilitate payments to COVID-19 community providers by transferring funds designated under division (B)(2) or (3) of this section to the Departments of Developmental Disabilities and Mental Health and Addiction Services via intrastate transfer vouchers.

(C) The Medicaid Director shall specify all of the following regarding the Medicaid payments authorized by this section:

(1) Any requirements that a COVID-19 community provider must meet;

(2) Enhanced rates or additional services reimbursement;

(3) Methods of payment.

(D) Section 5162.07 of the Revised Code as it pertains to seeking federal approval for components of the Medicaid program applies to this section.

(E) All amounts in this section are hereby appropriated.

SECTION 15. Notwithstanding anything to the contrary in section 3313.482 of the Revised Code, the board of education of a school district, the governing authority of a community school established under Chapter 3314. of the Revised Code that is not an internet- or computer-based community school, the governing body of a STEM school established under Chapter 3326. of the Revised Code, or the governing authority of a chartered nonpublic school shall be permitted to do either of the following to make up days or hours schools were closed in the 2019-2020 school year due to the Director of Health's order under section 3701.13 of the Revised Code "In Re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, or any local board of health order, and any extension of any order:

(A) If the board, governing body, or governing authority has adopted a plan under section 3313.482 of the Revised Code to require students to access and complete classroom lessons posted on the district's or school's web site in order to make up hours in the 2019-2020 school year for which it is necessary to close schools due to conditions described in that section, the board, governing body, or governing authority may amend that plan, anytime on or after the effective date of this section, to provide for making up any number of hours schools were closed in the 2019-2020 school year in compliance with the Director's order, local board of health order, or an extension of an order.

(B) If the board, governing body, or governing authority has not adopted a plan under section

3313.482 of the Revised Code to require students to access and complete classroom lessons posted on the district's or school's web site in order to make up hours for the 2019-2020 school year, the board, governing body, or governing authority may adopt such a plan, anytime on or after the effective date of this section, to provide for making up any number of hours schools were closed in the 2019-2020 school year in compliance with the Director's order, local board of health order, or an extension of an order.

SECTION 16. (A) As used in this section, "license" includes any license, certificate, permit, or other authorization issued by a state licensing board that allows the holder to practice a job or profession.

(B) This section applies to all of the following during the period of the Director of Health's order under section 3701.13 of the Revised Code "In Re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, any local board of health order to close schools, or any extension of an order due to the implications of COVID-19, or until December 1, 2020, if the order or extension of the order has not been rescinded by that date:

(1) The Ohio Speech and Hearing Professionals Board described in section 4753.05 of the Revised Code;

(2) The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board created under section 4755.01 of the Revised Code;

(3) The State Board of Psychology appointed under section 4732.02 of the Revised Code;

(4) The Counselor, Social Worker, and Marriage and Family Therapist Board created under section 4757.03 of the Revised Code;

(5) The State Board of Education with respect to intervention specialists.

(C) Notwithstanding anything to the contrary in the Revised Code or in an administrative rule adopted by a licensing board to which this section applies, a person who holds a valid license issued by such a board may provide services within the scope of practice authorized under the license by electronic delivery method or telehealth communication to any student participating in the Autism Scholarship Program established under section 3310.41 of the Revised Code or the Jon Peterson Special Needs Scholarship Program established under section 3310.52 of the Revised Code, or to any student who was enrolled in a public or private school and was receiving those services, regardless of the method of delivery, prior to the issuance of the Director of Health's order. No licensing board to which this section applies shall take any disciplinary action against a license holder who provides services to a student in accordance with this section, including limiting, suspending, or revoking the person's license or refusing to issue a license to the person, solely because the license holder provided such services.

SECTION 17. Notwithstanding anything in the Revised Code or Administrative Code to the contrary, for the 2019-2020 school year only, except as otherwise provided in this section, due to the Director of Health's order under section 3701.13 of the Revised Code "In re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, or any local board of health order, and any extension of any order, based on the implications of COVID-19, all of the following apply:

(A)(1) Any city, exempted village, local, joint vocational, or municipal school district, any community school established under Chapter 3314. of the Revised Code, any STEM school established under Chapter 3326. of the Revised Code, any chartered nonpublic school, and the State School for the Deaf and the State School for the Blind shall not be required to administer the assessments prescribed in sections 3301.0710, 3301.0711, 3301.0712, 3313.903, and 3314.017 of the Revised Code, including the Ohio English Language Proficiency Assessment administered to English learners pursuant to division (C)(3)(b) of section 3301.0711 of the Revised Code and the Alternate Assessment for Students with Significant Cognitive Disabilities prescribed in division (C)(1) of section 3301.0711 of the Revised Code.

(2) Any chartered nonpublic school that has chosen to administer assessments under section 3313.619 of the Revised Code that has not administered such assessments by March 17, 2020, shall not be required to administer those assessments.

(3) The Department of Education shall not exclude any student to whom an assessment was not administered in the 2019-2020 school year under division (A) of this section from counting in a district's or school's enrollment for the 2020-2021 school year pursuant to division (L)(3) of section 3314.08, division (E)(3) of section 3317.03, or division (C) of section 3326.37 of the Revised Code.

(4) If a student was not administered an assessment in the 2019-2020 school year under division (A) of this section, that school year shall not count in determining if the student is subject to withdrawal from a school pursuant to section 3313.6410 or 3314.26 of the Revised Code.

(5) No student who received a scholarship under the Educational Choice Scholarship Program under section 3310.03 or 3310.032 of the Revised Code, the Jon Peterson Special Needs Scholarship Program under section 3310.52 of the Revised Code, or the Pilot Project Scholarship Program under section 3313.975 of the Revised Code for the 2019-2020 school year shall be considered ineligible to renew that scholarship for the 2020-2021 school year solely because the student was not administered an assessment in the 2019-2020 school year under division (A) of this section.

(B)(1) The Department of Education shall not publish state report card ratings under section 3302.03, 3302.033, 3314.012, or 3314.017 of the Revised Code nor shall the Department be required to submit preliminary data for the report cards by July 31, 2020, as required by those sections. Furthermore, the Department shall not assign an overall letter grade under division (C)(3) of section 3302.03 of the Revised Code for any school district or building, shall not assign an individual grade to any component prescribed under division (C)(3) of section 3302.03 of the Revised Code, shall not assign a grade to any measures under division (C)(1) of section 3302.03 of the Revised Code, and shall not rank school districts, community schools, or STEM schools under section 3302.21 of the Revised Code for the 2019-2020 school year.

However, the Department shall report any data that it has regarding the performance of districts and buildings for the 2019-2020 school year by September 15, 2020.

(2) The absence of report card ratings for the 2019-2020 school year shall have no effect in determining sanctions or penalties, and shall not create a new starting point for determinations that are based on ratings over multiple years. The report card ratings of any previous or subsequent years shall be considered in determining whether a school district or building is subject to sanctions or penalties. If a school district or building was subject to any of the following penalties or sanctions in

the 2019-2020 school year based on its report card rating for previous school years, those penalties or sanctions shall remain for the 2020-2021 school year. Those penalties and sanctions include the following:

(a) Any restructuring provisions established under Chapter 3302. of the Revised Code, except as required under federal law;

(b) Provisions for the Columbus City School Pilot Project under section 3302.042 of the Revised Code;

(c) Provisions for academic distress commissions under section 3302.10 of the Revised Code. While a district subject to an academic distress commission prior to the effective date of this section shall be considered to be subject to an academic distress commission for the 2020-2021 school year, that year shall not be included for purposes of determining progressive consequences under divisions (H), (I), (J), (K), and (L) of section 3302.10 of the Revised Code that are in addition to those that were being exercised by the chief executive officer during the 2019-2020 school year or for purposes of the appointment of a new board of education under division (K) of that section. Nothing in division (B)(2)(c) of this section shall be construed to limit the powers that the chief executive officer exercised under section 3302.10 of the Revised Code prior to the 2020-2021 school year.

(d) Provisions prescribing new buildings where students are eligible for the Educational Choice Scholarships under section 3310.03 of the Revised Code;

(e) Provisions defining "challenged school districts" in which new start-up community schools may be located, as prescribed in section 3314.02 of the Revised Code;

(f) Provisions prescribing community school closure requirements under section 3314.35 or 3314.351 of the Revised Code;

(g) Provisions of state or federal law that identify school districts or buildings for comprehensive or targeted support and improvement or additional targeted support and improvement. Districts and buildings so identified shall continue to receive supports and interventions consistent with their support and improvement plans in the 2020-2021 school year.

(h) Provisions that determine the conditions under which community schools may change sponsors under section 3314.034 of the Revised Code.

(C) No school district, community school, or STEM school and no chartered nonpublic school that is subject to section 3301.163 of the Revised Code shall retain a student in the third grade under that section or section 3313.608 of the Revised Code based solely on a student's academic performance in reading in the 2019-2020 school year unless the principal of the school building in which a student is enrolled and the student's reading teacher agree that the student is reading below grade level and is not prepared to be promoted to the fourth grade.

(D)(1) Division (D) of this section applies to any student who meets both of the following criteria:

(a) The student was enrolled in the twelfth grade in the 2019-2020 school year or was on track to graduate in the 2019-2020 school year, as determined by the school district or other public or chartered nonpublic school in which the student was enrolled, regardless of the graduation cohort in which the student is included.

(b) The student had not completed the requirements for a high school diploma under section 3313.61, 3313.612, or 3325.08 of the Revised Code or under Section 3 of H.B. 491 of the 132nd

General Assembly, as of March 17, 2020.

(2) A city, exempted village, local, or municipal school district, a community school, a STEM school, a chartered nonpublic school, the State School for the Blind, and the State School for the Deaf shall grant a high school diploma to any student to whom this section applies, if the student's principal, in consultation with teachers and counselors, reviews the student's progress toward meeting the requirements for a diploma and determines that the student has successfully completed the curriculum in the student's high school or the individualized education program developed for the student by the student's high school pursuant to section 3323.08 of the Revised Code, or qualified under division (D) or (F) of section 3313.603 of the Revised Code, at the time the student's school closed pursuant to the Director of Health's order under section 3701.13 of the Revised Code "In Re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020. No district or school shall grant a high school diploma under division (D)(2) of this section after September 30, 2020.

(3) If the board of education of a school district or the governing authority of a community school, STEM school, chartered nonpublic school, the State School for the Blind, or the State School for the Deaf has adopted a resolution under division (E) of section 3313.603 of the Revised Code requiring a more challenging curriculum than otherwise required under division (C) of that section, the district superintendent or the chief administrator of the school may elect to require only the minimum curriculum specified in division (C) of that section for the purpose of determining if a student to whom division (D) of this section applies has successfully completed the curriculum under division (D)(2) of this section. If such an election is made, the superintendent or chief administrator shall evaluate each student to whom division (D) of this section applies using the minimum curriculum specified in division (C) of this section.

(4) It is the intent of the General Assembly that school districts and other public and private schools do both of the following:

(a) Continue to provide ways to keep students actively engaged in learning opportunities between March 17, 2020, and the remainder of the school year;

(b) Grant students who need in-person instructional experiences to complete requirements for a diploma or a career-technical education program access to school facilities as soon as it is reasonably possible after the Director of Health permits such access to resume, even if the last instructional day of the school year has already passed.

(E) For the purpose of teacher evaluations conducted under sections 3319.111 and 3319.112 of the Revised Code, no school district board of education shall use value-added progress dimension data, established under section 3302.021 of the Revised Code, from the 2019-2020 school year to measure student learning attributable to the teacher being evaluated.

(F) For community school sponsor evaluations required under section 3314.016 of the Revised Code, the Department shall not issue a rating for the academic performance component under division (B)(1)(a) of that section to any sponsor and shall not include academic performance in the calculation of an overall rating for the sponsor. The Department's rating of a sponsor for the 2019-2020 school year shall be based only on the components listed in divisions (B)(1)(b) and (c) of that section.

In evaluating a sponsor based on the components in divisions (B)(1)(b) and (c) of section

3314.016 of the Revised Code for the 2019-2020 school year, the Department shall not find a sponsor or a school out of compliance with an applicable law or administrative rule for any requirement for an action that should have occurred while schools were closed pursuant to the Director of Health's order under section 3701.13 of the Revised Code "In Re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, any local board of health order, or any extension of an order.

(G) The Superintendent of Public Instruction may waive the requirement to complete any report prescribed by law that is based on data from assessments that would have been but were not administered during the 2019-2020 school year pursuant to division (A) of this section.

(H) The Department, on behalf of the State Board of Education, may issue a one-year, nonrenewable provisional license to any individual to practice in any category, type, and level for which the State Board issues a license pursuant to Title XXXIII of the Revised Code, if the individual has met all requirements for the requested license except for the requirement to pass an examination prescribed by the State Board in the subject area for which application is being made. Any individual to whom a provisional license is issued under this division shall take and pass the appropriate subject area examination prior to expiration of the license as a condition of advancing the license in the appropriate category, type, and level. The Department shall not issue a provisional license under this division that is valid on or after July 1, 2021.

(I) The Superintendent of Public Instruction may extend or waive any deadline for an action required of the State Board of Education, the Department of Education, or any person or entity licensed or regulated by the State Board or Department during the duration of the Director of Health's order under section 3701.13 of the Revised Code "In re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, or any local board of health order, and any extension of any order, based on the implications of COVID-19, as necessary to ensure that the safety of students, families, and communities are prioritized while continuing to ensure the efficient operation of the Department and public and private schools in this state. Deadlines that may be extended or waived by the State Superintendent include, but are not limited to, deadlines related to the following:

(1) The conduct of evaluations for school personnel under Chapter 3319. of the Revised Code;

(2) Notice of intent not to reemploy school personnel under Chapter 3319. Of the Revised Code;

(3) The conduct of school safety drills under section 3737.73 of the Revised Code;

(4) The emergency management test required by division (E) of section 3313.536 of the Revised Code;

(5) The filling of a vacancy in a board of education;

(6) Updating of teacher evaluation policies to conform with the framework for evaluation of teachers adopted under section 3319.112 of the Revised Code;

(7) Identification and screening of gifted students under Chapter 3324. of the Revised Code.

(J) Notwithstanding anything in the Revised Code or Administrative Code to the contrary, the Chancellor of Higher Education, in consultation with the Superintendent of Public Instruction, may waive, extend, suspend, or modify requirements of the College Credit Plus program if the Chancellor, in consultation with the Superintendent, determines the waiver, extension, suspension, or

modification is necessary in response to COVID-19.

(K) The Superintendent of Public Instruction shall collaborate with providers in the 22+ Adult High School Diploma Program authorized under sections 3314.38, 3317.23, 3317.231, 3317.24, and 3345.86 of the Revised Code and the Adult Diploma Program authorized under section 3313.902 of the Revised Code, and rules adopted thereunder, to ensure that the providers have maximum flexibility to assist students whose progress in the program has been affected by the Director of Health's order to complete the requirements to earn a high school diploma. For this purpose, the State Superintendent may waive or extend deadlines, or otherwise grant providers and students flexibility, for completion of program requirements.

(L) No school district shall require the parent of any student who was instructed at home in accordance with section 3321.04 of the Revised Code for the 2019-2020 school year to submit to the district superintendent the results of a standardized achievement assessment administered to the student as a condition of the district allowing the student to continue to receive home instruction for the 2020-2021 school year.

(M) Notwithstanding anything in the Revised Code to the contrary, the board of education of any school district that, prior to the Director of Health's order under section 3701.13 of the Revised Code "In re: Order the Closure of All K-12 Schools in the State of Ohio" issued on March 14, 2020, had not completed an evaluation that was required under Chapter 3319. of the Revised Code for the 2019-2020 school year for an employee of the district, including a teacher, administrator, or superintendent, may elect not to conduct an evaluation of the employee for that school year, if the district board determines that it would be impossible or impracticable to do so. If a district board elects not to evaluate an employee for the 2019-2020 school year, the employee shall be considered not to have had evaluation procedures complied with pursuant to section 3319.111 of the Revised Code for purposes of section 3319.11 of the Revised Code. The district board may collaborate with any bargaining organization representing employees of the district in determining whether to complete evaluations for the 2019-2020 school year. Nothing in this section shall preclude a district board from using an evaluation completed prior to the Director of Health's order in employment decisions.

SECTION 18. During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, the Department of Job and Family Services may continue to pay a provider of publicly funded child care if both of the following apply:

(A) The provider is under contract with the Department as described in section 5104.32 of the Revised Code;

(B) The provider is unable to provide publicly funded child care to children of eligible caretaker parents as a result of the emergency.

SECTION 19. (A) As used in this section:

(1) "Benefits," "benefit year," "claim for benefits," "employer," and "unemployed" have the same meanings as in section 4141.01 of the Revised Code.

(2) "Reimbursing employer" means an employer that makes payments in lieu of contributions

as defined in section 4141.01 of the Revised Code.

(B) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, if the period of emergency continues beyond that date, all of the following apply:

(1) The requirement that an individual serve a waiting period under division (B) of section 4141.29 of the Revised Code before receiving benefits does not apply to a benefit year that begins after the effective date of this section.

(2) The Director of Job and Family Services may waive the requirement that an individual be actively seeking suitable work under division (A)(4)(a) of section 4141.29 of the Revised Code for any claim for benefits filed during the duration of this section.

(3) Notwithstanding division (D)(2) of section 4141.29 of the Revised Code, an individual shall not be disqualified from being paid benefits if the individual is unemployed or is unable to return to work because of an order, including an isolation or quarantine order, issued by any of the following:

(a) The individual's employer;

(b) The Governor;

(c) The board of health of a city health district pursuant to section 3709.20 of the Revised Code;

(d) The board of health of a general health district pursuant to section 3709.21 of the Revised Code;

(e) A health commissioner pursuant to section 3707.34 of the Revised Code;

(f) The Director of Health pursuant to section 3701.13 of the Revised Code.

(4) Benefits that may become payable to an individual described in division (B)(3) of this section shall be charged to the mutualized account created by division (B) of section 4141.25 of the Revised Code, provided that no charge shall be made to the mutualized account for benefits chargeable to a reimbursing employer, except as provided in division (D)(2) of section 4141.24 of the Revised Code.

SECTION 20. Section 317.33 of the Revised Code is suspended until August 30, 2020.

SECTION 21. (A) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and notwithstanding an order or directive from the court of common pleas or the board of county commissioners, the office of a county recorder, the office of a county auditor, the title office of a clerk of court of common pleas, and the county map office shall remain open and operational in order to allow land professionals physical access to the office as necessary to search records that are not otherwise available online, digital, or by some other means, so long as all necessary public land records are available. The office may provide such access during limited hours and for a limited duration, and may subject searchers to requirements and restrictions in the interest of public health. The office may allow persons other than land professionals physical access to the office at the discretion of the office during such limited hours, for such limited duration, and subject to such requirements and restrictions in the interest of public health as the office determines. All

essential services to effectuate a property transfer shall remain open and available with all offices.

(B) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and notwithstanding an order or directive from the court of common pleas or the board of county commissioners, the title office of a clerk of court of common pleas shall remain open and operational in order to allow land professionals, automobile, watercraft, outboard motor, all terrain vehicles, and mobile home dealers access to the office as necessary to process titles that are not otherwise available online. The office may provide such access during limited hours and for a limited duration, and may subject nonclerk personnel to requirements and restrictions in the interest of public health. The office may allow persons other than the aforementioned land professionals and dealers physical access to the office at the discretion of the office during such limited hours, for such limited duration, and subject to such requirements and restrictions in the interest of public health as the office determines.

SECTION 22. (A) The following that are set to expire between March 9, 2020, and July 30, 2020, shall be tolled:

(1) A statute of limitation, as follows:

(a) For any criminal offense, notwithstanding any other provision of law to the contrary, the applicable period of limitation set forth in section 2901.13 of the Revised Code for the criminal offense;

(b) When a civil cause of action accrues against a person, notwithstanding any other provision of law to the contrary, the period of limitation for commencement of the action as provided under any section in Chapter 2305. of the Revised Code, or under any other provision of the Revised Code that applies to the cause of action;

(c) For any administrative action or proceeding, the period of limitation for the action or proceeding as provided under the Revised Code or the Administrative Code, if applicable.

(2) The time within which a bill of indictment or an accusation must be returned or the time within which a matter must be brought before a grand jury;

(3) The time within which an accused person must be brought to trial or, in the case of a felony, to a preliminary hearing and trial;

(4) Time deadlines and other schedule requirements regarding a juvenile, including detaining a juvenile;

(5) The time within which a commitment hearing must be held;

(6) The time by which a warrant must be issued;

(7) The time within which discovery or any aspect of discovery must be completed;

(8) The time within which a party must be served;

(9) The time within which an appearance regarding a dissolution of marriage must occur pursuant to section 3105.64 of the Revised Code;

(10) Any other criminal, civil, or administrative time limitation or deadline under the Revised Code.

(B) This section applies retroactively to the date of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020.

(C) Division (A) of this section expires on the date the period of emergency ends or July 30,

2020, whichever is sooner.

SECTION 23. The Public Employees Retirement Board, State Teachers Retirement Board, School Employees Retirement Board, or State Highway Patrol Retirement Board may delay an election of members to the applicable board that is scheduled to take place during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but before December 1, 2020, until December 1, 2020. The delayed election shall be conducted as provided for in section 145.058, 3307.075, 3309.075, or 5505.047 of the Revised Code.

The Ohio Police and Fire Pension Fund Board of Trustees may delay an election of members to the Board that is scheduled to take place during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but before December 1, 2020, until December 1, 2020. The delayed election shall be conducted as provided in section 742.04 of the Revised Code, except that the Board shall adjust the dates in that section for nominating petitions to be filed and ballots to be returned to the Board to reflect the new election date.

If a board delays an election in accordance with this section, the elected members of the board whose terms were set to expire following the original election date shall continue in office subsequent to the expiration date of the member's term until the member's successor is elected and takes office.

SECTION 24. Notwithstanding sections 3.16, 305.02, 731.43, 733.08, 733.31, 1901.31, and 3513.31 of the Revised Code, the county central committee of the political party that is responsible for filling any vacancy shall have an additional forty-five days to fill the vacancy from the date the vacancy was required to be filled during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020.

SECTION 25. The Auditor of State, on a case-by-case basis, may determine that the requirement under division (D) of section 117.114 of the Revised Code to have one audit performed under division (A) of section 117.11 or division (A) of section 117.12 of the Revised Code may be waived, if the waiver applies to an audit period during which the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, is or was in effect.

SECTION 26. The Auditor of State, on a case-by-case basis, may determine that a qualifying subdivision that fails to meet any of the criteria established by rule under division (B) of section 117.114 of the Revised Code is otherwise eligible for an agreed-upon procedure audit and may, in writing, grant a waiver of particular criteria, if the waiver applies to an audit period during which the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, is or was in effect.

SECTION 27. During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, but not beyond December 1, 2020, all of the following apply:

(A) Notwithstanding Chapter 164. of the Revised Code or any other provision of law to the

contrary, the Ohio Public Works Commission may automatically extend project schedules. The extension shall be for a duration determined by the Commission. The Commission shall not provide for an extension if federal law does not provide for or allow an extension regarding any particular project. The Commission also may waive penalties and late fees owed to the Commission from the issuance of outstanding loans.

(B) Notwithstanding Chapter 6121. or 6123. of the Revised Code or any other provision of law to the contrary, the Ohio Water Development Authority may waive penalties and late fees owed to the Authority from the issuance of outstanding loans.

(C) Notwithstanding Chapter 3734., 3745., or 6119. of the Revised Code or any other provision of law to the contrary, the Ohio Environmental Protection Agency may waive penalties or late fees owed to the Agency from the issuance of outstanding loans or permits. The Agency also may suspend reporting requirements for water research recovery facilities or solid waste facilities.

SECTION 28. (A) Notwithstanding section 5703.35 of the Revised Code, the Tax Commissioner may do any of the following during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020:

(1) Extend to any company, firm, corporation, person, association, partnership, or public utility affected by the emergency a further specified time within which to file any report required by law to be filed with the Commissioner, in which event the attaching of any penalty for failure to file such report or pay any tax or fee shall be extended accordingly, without regard to the forty-five-day limitation of section 5703.35 of the Revised Code;

(2) Extend to any company, firm, corporation, person, association, partnership, or public utility affected by the emergency a further specified time within which to make any estimated or accelerated payment that would otherwise be due pursuant to Chapter 718., 3734., 3769., 4303., or 4305., or Title LVII of the Revised Code, in which event the attaching of any penalty for failure to file such report or pay any tax or fee shall be extended accordingly;

(3) Waive the payment of interest that is calculated at the rate per annum prescribed by section 5703.47 of the Revised Code and that would otherwise be due pursuant to Chapter 718., 3734., 3769., 4303., or 4305., or Title LVII of the Revised Code for any payment extended under division (A)(1) or (2) of this section.

(B) If the Tax Commissioner extends for all taxpayers the date for filing state income tax returns under division (A) of this section or division (G) of section 5747.08 of the Revised Code during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, a taxpayer shall automatically receive an extension for the filing of a municipal net profit tax return under section 718.85 of the Revised Code during that period. The extended due date of the municipal net profit tax return shall be the same as the extended due date of the state income tax return.

SECTION 29. Notwithstanding section 718.011 of the Revised Code, and for the purposes of Chapter 718. of the Revised Code, during the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, and for thirty days after the conclusion of that period, any day on which an employee performs personal services at a location, including the employee's home, to

which the employee is required to report for employment duties because of the declaration shall be deemed to be a day performing personal services at the employee's principal place of work.

SECTION 30. (A) During the period of the emergency declared by Executive Order 2020-01D, issued on March 9, 2020, the requirement of division (A)(2)(a) of section 4723.09 of the Revised Code is suspended. Accordingly, during such period, the Board of Nursing shall grant to an applicant described in division (A) of section 4723.09 of the Revised Code a temporary license to practice nursing as a registered nurse or as a licensed practical nurse if the conditions of divisions (A)(1) and (A)(2)(b) to (d) of section 4723.09 of the Revised Code have been met.

(B) A temporary license issued under this section shall be valid until whichever of the following dates occurs first:

(1) The date that is ninety days after December 1, 2020;

(2) The date that is ninety days after the duration of the period of the emergency described in division (A) of this section.

SECTION 31. (A) Notwithstanding section 3310.03 of the Revised Code, Section 265.210 of H.B. 166 of the 133rd General Assembly, as amended by S.B. 120 of the 133rd General Assembly, and any other provision of law to the contrary, the Department of Education shall not accept, process, or award first-time performance-based Educational Choice scholarships under section 3310.03 of the Revised Code for the 2020-2021 school year to students who are eligible for the scholarship for the first time for the 2020-2021 school year and whose scholarships would have been paid for under Section 265.210 of H.B. 166 of the 133rd General Assembly, as amended by S.B. 120 of the 133rd General Assembly.

However, the Department shall accept, process, and award scholarships for any of the following:

(1) Students who received a scholarship in the 2019-2020 school year;

(2) A student who satisfies all of the following criteria:

(a) The student's sibling received a scholarship under section 3310.03 of the Revised Code during the 2019-2020 school year.

(b) The student is enrolled in or would be enrolled in a building that, in the 2019-2020 school year, met any of the conditions prescribed in section 3310.03 of the Revised Code.

(c) The student was enrolled in a public or nonpublic school in any of grades kindergarten through twelve or was homeschooled for the equivalent of those grades for the 2019-2020 school year, or will be enrolled in kindergarten or will start homeschooling for the equivalent of kindergarten in the 2020-2021 school year.

As used in this section, "sibling" means a brother, half-brother, sister, or half-sister, by birth, adoption, or marriage, without regard to residence or custodial status, or a child residing in the same household as a foster child or under a guardianship or custodial order. As used in this section, "foster child" means a child placed in a family foster home, as defined in section 5103.02 of the Revised Code.

(3) Students who were eligible for scholarships for the 2019-2020 school year, regardless of

whether the students received scholarships for that school year, and remain eligible for the 2020-2021 school year;

(4) Students who did not receive a scholarship for the 2019-2020 school year but, for the 2020-2021 school year are or would be newly enrolled in a building operated by the students' resident district that met the conditions prescribed in section 3310.03 of the Revised Code for the 2019-2020 school year, as that section existed for that school year, and also continued to meet the conditions for the 2020-2021 school year, including students entering kindergarten, entering high school students, or students who have recently relocated to the district or building's attendance territory.

Scholarships for students described in divisions (A)(1), (2), (3), and (4) of this section shall be funded through deductions from the students' resident school districts in the manner described in section 3310.08 of the Revised Code.

The Department shall accept, process, or award performance-based Educational Choice scholarships for the 2020-2021 school year for students described in divisions (A)(1) to (4) of this section under the sixty-day-application period that begins on April 1, 2020, pursuant to Section 265.210 of H.B. 166 of the 133rd General Assembly, as amended by S.B. 120 of the 133rd General Assembly.

(B) The Department shall accept, process, and award performance-based Educational Choice scholarships under section 3310.03 of the Revised Code on February 1, 2021, for the 2021-2022 school year.

(C) This section does not affect the awarding of income-based scholarships.

SECTION 32. Notwithstanding any contrary provision of the Revised Code:

(A) Secretary of State Directive 2020-06, issued on March 16, 2020, is void.

(B) During the period beginning on the effective date of this section and ending at 7:30 p.m. on April 28, 2020, no board of elections, and no election official, shall do any of the following:

(1) Count any ballots cast in the March 17, 2020, primary election, or in any special election held on the day of the primary election;

(2) Release the count or any portion of the count of any ballots cast in the March 17, 2020, primary election, or in any special election held on the day of the primary election;

(3) Process any voter registration application submitted after February 18, 2020.

(C)(1)(a) An elector who has not already cast a ballot in the March 17, 2020, primary election, or in any special election held on the day of the primary election, and who was registered to vote in this state as of February 18, 2020, may vote in that election in accordance with this section.

(b) An elector who was registered to vote in this state as of February 18, 2020, and who cast a ballot at any time before the effective date of this section in the March 17, 2020, primary election, or in any special election held on the day of the primary election, shall have the elector's ballot counted if it is received at the office of the board not later than the applicable deadline specified in division (E) of this section and is otherwise eligible to be counted.

(2) As soon as possible after the effective date of this section, the Secretary of State shall send a postcard to each registered elector in this state, notifying the elector of the methods by which the elector may obtain an application for absent voter's ballots, the procedures and deadlines to apply

for absent voter's ballots under this section, and the procedures and deadline to return voted ballots to the office of the board of elections under this section.

(3) An elector described in division (C)(1)(a) of this section may apply by mail to the appropriate board of elections for absent voter's ballots. If the elector is eligible to cast absent voter's ballots with the assistance of election officials under section 3509.08 of the Revised Code, the elector may include with the elector's application a request that the board of elections assist the elector in casting the elector's ballots in accordance with section 3509.08 of the Revised Code. All applications submitted under this division shall be received at the office of the board not later than noon on April 25, 2020, except that an application submitted by an elector described in division (C)(1)(a) of this section who would be eligible to apply for absent voter's ballots not later than 3:00 p.m. on the day of an election under section 3509.08 of the Revised Code shall be received at the office of the board not later than 3:00 p.m. on April 28, 2020. Any application received after the applicable deadline shall be invalid.

(4) At the end of each day, the board of elections shall compile and transmit to the Secretary of State a list of all applications the board received that day, provided that the list shall exclude all information that is not considered a public record under the laws of this state. The Secretary of State shall make the list available to the public upon request.

(5)(a) If a board of elections receives an application under this section that does not contain all of the required information, the board promptly shall notify the applicant of the additional information required to be provided by the applicant to complete that application. In order for the application to be valid, the applicant shall provide that additional information to the board not later than the applicable deadline under division (C)(3) of this section.

(b) An application submitted under this section shall not be considered invalid solely on the basis that the applicant indicated a date other than March 17, 2020, as the date of the 2020 primary election or of any special election held on the day of the election.

(6) If the board of elections determines that an application submitted under this section is valid, the board promptly shall deliver absent voter's ballots to the elector. The board shall deliver those ballots by mail, except as otherwise provided in division (D) of this section and except in the case of an elector whom the board assists in casting the elector's ballots in accordance with section 3509.08 of the Revised Code. When the board delivers those ballots by mail, it shall prepay the return postage for the ballots.

(7) If the board of elections determines that an application submitted under this section is not valid because the applicant is an elector who has moved or had a change of name without updating the elector's registration, as described in section 3503.16 of the Revised Code, or for any other reason, the board promptly shall deliver a provisional ballot to the applicant. The board shall deliver the ballot by mail, except as otherwise provided in division (D) of this section and except in the case of an elector whom the board assists in casting the elector's ballot in accordance with section 3509.08 of the Revised Code. When the board delivers the ballot by mail, it shall prepay the return postage for the ballot. The board shall include all of the following with the provisional ballot:

(a) The reason the applicant has received a provisional ballot instead of absent voter's ballots;

(b) Instructions for the applicant to complete the provisional ballot affirmation, including an option to submit a copy of a form of identification described in section 3505.182 of the Revised

Code;

(c) Instructions for the applicant to return the provisional ballot in the same manner as absent voter's ballots and a return envelope in which the applicant may return the provisional ballot;

(d) Instructions for the applicant to ascertain the status of the applicant's provisional ballot, as described in section 3505.181 of the Revised Code.

(D)(1) Only the following electors may apply for and cast absent voter's ballots in person at the office of the board of elections on April 28, 2020, not later than 7:30 p.m., instead of applying to receive those ballots by mail:

(a) An elector to whom division (C)(1)(a) of this section applies, who has a disability, and who wishes to cast absent voter's ballots using a direct recording electronic voting machine or marking device that is accessible for voters with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. Each board shall have at least one such machine or device available for use at the office of the board.

(b) An elector to whom division (C)(1)(a) of this section applies and who is unable to receive mail at the place where the elector resides or at another location.

(2) All eligible electors waiting in line to cast ballots in person under division (D) of this section as of 7:30 p.m. on April 28, 2020, shall be permitted to cast absent voter's ballots.

(E)(1) Absent voter's ballots and provisional ballots cast at any time before or after the effective date of this section by electors who were registered to vote in this state as of February 18, 2020, for the March 17, 2020, primary election, or for any special election held on the day of the primary election, shall be eligible to be counted if they are received at the office of the appropriate board of elections not later than 7:30 p.m. on April 28, 2020. The board shall place a secure receptacle outside the office of the board for the return of ballots under this section. Except as otherwise provided in divisions (E)(2) and (3) of this section, ballots received after 7:30 p.m. on April 28, 2020, shall not be counted.

(2) Ballots received by mail at the office of the board after 7:30 p.m. on April 28, 2020, and not later than May 8, 2020, are eligible to be counted if they are postmarked on or before April 27, 2020, and are not postmarked using a postage evidencing system, including a postage meter, as defined in 39 C.F.R. 501.1.

(3) Ballots cast by uniformed services and overseas absent voters that are received by mail at the office of the board after 7:30 p.m. on April 28, 2020, and not later than May 8, 2020, are eligible to be counted if they were submitted for mailing not later than 12:01 a.m. at the place where the voter completed the ballots on April 28, 2020, regardless of whether the ballots are postmarked.

(F)(1) If the election officials find that the identification envelope statement of voter containing absent voter's ballots for the March 17, 2020, primary election, or for any special election held on the day of the primary election, is incomplete or that the information contained in that statement does not conform to the information contained in the Statewide Voter Registration Database concerning the voter, as described in section 3509.06 of the Revised Code, the voter shall provide the necessary information to the board of elections in accordance with that section not later than May 5, 2020.

(2) An individual who casts a provisional ballot under this section and who is required under

sections 3505.181 to 3505.183 of the Revised Code to provide identification or additional information to the board of elections shall provide the necessary identification or information to the board in accordance with those sections not later than May 5, 2020.

(G) The boards of elections and the Secretary of State shall complete the unofficial count, the canvass of the election returns, and all other post-election procedures with respect to the March 17, 2020, primary election, and any special election held on the day of the primary election, on the dates provided in the Revised Code, except that each deadline shall be calculated by adding 42 days.

(H) For the purpose of the contribution limits described in section 3517.102 of the Revised Code, the date of the 2020 primary election is March 17, 2020. However, the statements of contributions and expenditures required to be filed under division (A)(2) of section 3517.10 of the Revised Code after the primary election shall be filed not later than 4:00 p.m. on June 5, 2020.

(I) In implementing this act, the Secretary of State shall proceed as though the Department of Administrative Services has suspended, under section 125.061 of the Revised Code, the purchasing and contracting requirements contained in Chapter 125. of the Revised Code that otherwise would apply to the Secretary of State. The Secretary of State shall comply with division (E) of that section.

SECTION 33. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the designated fund. For all appropriations made in this act, those in the first column are for fiscal year 2020 and those in the second column are for fiscal year 2021. The appropriations made in this act are in addition to any other appropriations made for the FY 2020-FY 2021 biennium.

	1	2	3	4	5
A	SOS SECRETARY OF STATE				
B	Dedicated Purpose Fund Group				
C	5RG0	050627	Absent Voter's Ballot Application Mailings	$ 7,000,000	$ 0
D	TOTAL Dedicated Purpose Fund Group			$ 7,000,000	$ 0
E	TOTAL ALL BUDGET FUND GROUPS			$ 7,000,000	$ 0

ABSENT VOTER'S BALLOT APPLICATION MAILINGS

The foregoing appropriation item 050627, Absent Voter's Ballot Application Mailings, shall

be used by the Secretary of State to pay for expenses related to implementing this act.

An amount equal to the unexpended, unencumbered portion of the foregoing appropriation item 050627, Absent Voter's Ballot Application Mailings, at the end of fiscal year 2020 is hereby reappropriated to the Secretary of State for the same purpose in fiscal year 2021.

On the effective date of this section, or as soon as possible thereafter, the Director of Budget and Management shall transfer $7,000,000 cash from the Controlling Board Emergency Purposes/Contingencies Fund (Fund 5KM0) to the Absent Voter's Ballot Application Mailing Fund (Fund 5RG0).

Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this act shall be accounted for as though made in the main operating appropriations act of the 133rd General Assembly.

The appropriations made in this act are subject to all provisions of H.B. 166 of the 133rd General Assembly that are generally applicable to such appropriations.

SECTION 34. All items in this section are hereby appropriated as designated out of any moneys in the state treasury to the credit of the designated fund. All appropriations made in this section are for the capital biennium ending June 30, 2020, and are in addition to any other appropriations made for the capital biennium ending June 30, 2020.

	1	2		3
A	DAS DEPARTMENT OF ADMINISTRATIVE SERVICES			
B	Administrative Building Fund (Fund 7026)			
C	C10050	State Agency Capital Projects	$	20,000,000
D	TOTAL Administrative Building Fund		$	20,000,000
E	TOTAL ALL FUNDS		$	20,000,000

Within the limits set forth in this section, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this section, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from appropriations contained in this section shall be accounted for as though made in H.B. 529 of the 132nd General Assembly.

The appropriations made in this section are subject to all provisions of H.B. 529 of the 132nd General Assembly that are generally applicable to such appropriations.

SECTION 35. Upon request of the Director of Administrative Services, the Director of Budget and Management may transfer up to $20,000,000 cash from the Building Improvement Fund (Fund 5KZ0) to the Administrative Building Fund (Fund 7026) to pay costs associated with state agency capital projects. When the cash balance in Fund 7026 can support such an action, the Director of Administrative Services shall request that the Director of Budget and Management transfer cash from Fund 7026 to Fund 5KZ0 in an amount equal to the initial cash transfer made under this section.

SECTION 36. BUDGET STABILIZATION FUND TRANSFER

Notwithstanding division (D) of section 127.14 of the Revised Code, the Director of Budget and Management may request, prior to the end of fiscal year 2020, approval from the Controlling Board for a transfer of cash from the Budget Stabilization Fund to the General Revenue Fund to help ensure that the available revenue receipts and balances in the General Revenue Fund are not less than the expenditures for fiscal year 2020. Upon the approval of at least two members of the Controlling Board who are members of the Senate and at least two members of the Controlling Board who are members of the House of Representatives, the Director may transfer cash in the amount approved from the Budget Stabilization Fund to the General Revenue Fund.

SECTION 37. Notwithstanding any other amendment to the title of H.B. 197 adopted during Third Consideration in the Senate, the title shall express the bill's content as follows: "to continue essential operations of state government and maintain the continuity of the state tax code in response to the declared pandemic and global health emergency related to COVID-19, to make appropriations, and to declare an emergency"

Notwithstanding any other amendment revising the emergency clause of H.B. 197, or adding an emergency clause to H.B. 197, adopted during Third Consideration in the Senate, only one section of the bill shall declare an emergency, which shall be the last section of the bill, to read as follows: "This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to continue essential operation of various facets of state government, maintain the continuity of the state tax code, and respond to the declared pandemic and global health emergency related to COVID-19. Therefore, this act shall go into immediate effect."

SECTION 38. The items of law contained in this act, and their applications, are severable. If any item of law contained in this act, or if any application of any item of law contained in this act, is held invalid, the invalidity does not affect other items of law contained in this act and their applications that can be given effect without the invalid item of law or application.

SECTION 39. The General Assembly, applying the principle stated in division (B) of section

1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the following sections, presented in this act as composites of the sections as amended by the acts indicated, are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act:

Section 133.18 of the Revised Code as amended by Am. Sub. H.B. 48 of the 128th General Assembly and Am. Sub. H.B. 153 of the 129th General Assembly.

Section 5705.19 of the Revised Code as amended by both Sub. H.B. 122 and Sub. H.B. 500 of the 132nd General Assembly.

SECTION 40. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to continue essential operation of various facets of state government, maintain the continuity of the state tax code, and respond to the declared pandemic and global health emergency related to COVID-19. Therefore, this act shall go into immediate effect.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Athens v. McClain*, Slip Opinion No. 2020-Ohio-5146.]

SLIP OPINION NO. 2020-OHIO-5146

THE CITY OF ATHENS ET AL., APPELLANTS, *v.* MCCLAIN, TAX COMMR., ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Athens v. McClain*, Slip Opinion No. 2020-Ohio-5146.]

Home Rule Amendment—General Assembly acted within its constitutional authority when it enacted laws centralizing the administration of municipal net-income taxes in 2017 Am.Sub.H.B. No. 49 ("H.B. 49")—Portion of H.B. 49 that allows the state to retain .5 percent of the collected municipal net-income taxes as a fee or a tax for the state's centralized administration is not constitutionally authorized.

(Nos. 2019-0693 and 2019-0696—Submitted May 13, 2020—Decided November 5, 2020.)

APPEALS from the Court of Appeals for Franklin County, Nos. 18AP-144 and 18AP-189, 2019-Ohio-277.

DONNELLY, J.

{¶ 1} Many Ohio municipalities impose a tax on income earned within their boundaries. When that tax is applied to businesses, it is known as a net-profits tax. Appellants, the cities of Athens, Akron, and Elyria, and numerous other cities and villages, all of which impose a net-profits tax, challenge the General Assembly's enactment of laws that centralize the collection and administration of those taxes. Additionally, some of the appellants challenge the portion of the law that allows the state to retain .5 percent of the collected taxes as a fee or a tax for the state's centralized administration.

{¶ 2} The contested legislation permits municipal net-profits taxpayers (other than sole proprietors) to elect to have the Ohio Department of Taxation administer their net-profits-tax obligations with respect to all the municipalities in which the taxpayer incurs those obligations. Appellants contend that the legislation violates their home-rule authority and exceeds the General Assembly's constitutional power to limit the power of municipalities to levy taxes.

{¶ 3} We conclude that the laws imposing centralized administration constitute an act of limitation within the General Assembly's explicit constitutional authority, and we affirm the portion of the court of appeals' judgment upholding the centralized-administration system. The law providing for the state's retention of .5 percent of municipal net-profits taxes is a different matter. Because the retention provision amounts to the imposition of a fee or a tax and because imposing a fee or a tax does not constitute an act of limitation, this provision exceeds the General Assembly's authority. We therefore sever the .5-percent-retention provision and reverse the portion of the court of appeals' judgment upholding that portion of the legislation. We also remand the cause to the Franklin County Court of Common Pleas.

I. BACKGROUND

A. Municipal income taxes and the General Assembly's power to limit municipal taxation

{¶ 4} Toledo enacted the first municipal income tax in Ohio in 1946, Ohio Legal Center Institute, *Ohio Taxation,* Chapter 17, at 316 (1967), and in upholding that tax as a valid exercise of home-rule authority, we specifically noted that the power of municipalities to tax is subject to preemption by the General Assembly, *Angell v. Toledo*, 153 Ohio St. 179, 91 N.E.2d 250 (1950), paragraph one of the syllabus. According to the Tax Foundation, 649 Ohio municipalities currently impose income taxes. https://taxfoundation.org/local-income-taxes-2019 (accessed July 24, 2020) [https://perma.cc/6HWJ-PEEX].

{¶ 5} In 1957, the General Assembly first exercised its power to limit municipal income taxation by enacting R.C. Chapter 718. Am.Sub.S.B. No. 133, 127 Ohio Laws 91. As originally enacted, R.C. Chapter 718 mandated a uniform tax rate, required municipalities to get voter approval before they could impose a higher rate, and immunized certain income from municipal taxation. Former R.C. 718.01, 137 Ohio Laws at 91-92. Over the years, R.C. Chapter 718 has been expanded to make municipal taxation more uniform, with the goal of making it easier for taxpayers to comply.

{¶ 6} In 2014, the General Assembly enacted 2014 Sub.H.B. No. 5 ("H.B. 5"), which established greater statewide uniformity of municipal income taxes by explicitly preempting municipalities from imposing an income tax unless they adopted, by ordinance or resolution, the provisions of R.C. Chapter 718 and levied the tax in accordance with those provisions, R.C. 715.013 and 718.04(A).

B. Enactment of centralized administration

{¶ 7} In 2017, the General Assembly enacted 2017 Am.Sub.H.B. No. 49 ("H.B. 49"), which added new sections to R.C. Chapter 718—R.C. 718.80 through 718.95—and those sections provide for a centralized administration of municipal

net-profits taxes. R.C. 718.80 authorizes municipal net-profits taxpayers to "elect to be subject to" those newly enacted sections "in lieu of the provisions set forth in the remainder of [R.C. Chapter 718]." Simply put, these taxpayers have the option to select the new method of centralized administration.[1]

{¶ 8} Before H.B. 49 was enacted, businesses had to file returns with and pay taxes directly to the municipalities to which they had net-profits-tax obligations. Or if one or more of those municipalities contracted for tax-administration services with an agency, such as Cleveland's Central Collection Agency or the Regional Income Tax Agency, the businesses would file and pay their municipality taxes on a composite basis to the respective agency. Businesses also had the option to submit their municipal tax filings and payments electronically, through the Ohio Business Gateway.

{¶ 9} Under the statutes enacted by H.B. 49, any business taxpayer may continue to file its return with and pay its taxes to each municipality, as it did in the past, or it may file a composite return with the state tax department and make its estimated and final payments to that department, which in turn determines the business's municipal net-profits liabilities for all municipalities, issues any assessment for deficiencies, processes all refund claims, and arranges through the state director of budget and management for tax amounts to be remitted to the appropriate municipalities on a monthly basis.

{¶ 10} The statutes enacted by H.B. 49 require the municipalities and the tax department to exchange information related to local tax liability of taxpayers that elect to file a composite return with the state. For their part, municipalities must annually certify their tax rates and any increase in those rates to the tax department. R.C. 718.80(C)(1). Additionally, within 90 days of receiving notification of a taxpayer's election to have the state administer its municipal taxes,

1. "Natural persons" are excluded from the definition of "taxpayer" for purposes of electing centralized administration, so only business entities have the option. R.C. 718.81(C).

the municipalities must submit information to the tax commissioner regarding the taxpayer's net operating losses and carryforwards, its municipally granted credits and carryforwards, its overpayment carryforwards, and any other information the municipality deems relevant to the state's determination of the taxpayer's liability. R.C. 718.80(C)(2). If a city or village fails to comply with these requirements, the tax commissioner must notify the state director of budget and management, who is required to withhold 50 percent of the amount due to that municipality "until the municipal corporation complies." R.C. 718.80(C)(3).

{¶ 11} For its part, the state has the obligation, each May and November, to provide the municipalities with a list of taxpayers that filed returns with the tax department and that had income apportionable to the particular municipality; the list must include (1) each taxpayer's name, address, and federal identification number, (2) each taxpayer's apportionment ratio for and amount of income apportionable to the municipality, (3) the amount of net operating loss carryforward used by each taxpayer, (4) whether the taxpayer requested that overpayments be carried forward, and (5) the amount of tax credits claimed under R.C. 718.94. R.C. 718.84(B). Additionally, within 30 days of the state's distribution of tax funds to the municipality, the tax commissioner must provide the municipality with a list naming each taxpayer that made estimated payments attributable to that municipality and the amount of the payment. R.C. 718.84(C).

{¶ 12} A municipality that discovers additional information that could result in a change to the taxpayer's liability may make a referral to the tax commissioner for an audit of the taxpayer. R.C. 718.84(F)(1). And if a municipality "believes that the commissioner has violated the commissioner's fiduciary duty as the administrator of the tax levied by the municipal corporation," it may seek a writ of mandamus. R.C. 718.84(F)(4).

{¶ 13} To defray the cost of state-level administration of municipal net-profits taxes, R.C. 718.85(B) provides that .5 percent of municipal tax payments

paid to the state shall be credited to the "municipal income tax administrative fund" rather than to the fund that distributes the funds to the municipalities.

{¶ 14} H.B. 49 makes the centralized-administration option available with respect to "taxable years beginning on or after January 1, 2018." *Id.* at uncodified Section 803.100(A). And the legislation requires all municipalities that impose the tax to adopt by ordinance or resolution R.C. 718.80 through 718.95 "on or before January 31, 2018." *Id.* at uncodified Section 803.100(B).

C. Course of proceedings

{¶ 15} These appeals both originate from an action for declaratory and injunctive relief that was filed in the Franklin County Court of Common Pleas on November 16, 2017 by more than 100 municipalities. The city of Athens was the lead plaintiff, and we refer to that group of plaintiffs as the "Athens plaintiffs." A second set of municipalities, with the city of Elyria as the lead plaintiff (the "Elyria plaintiffs") intervened in the action. The complaint named four defendants but two were later dismissed, leaving defendants-appellees, the state of Ohio and the tax commissioner (then Joseph Testa, now Jeff McClain) (collectively, "the state").

{¶ 16} The trial court entered an agreed order in December 2017 staying enforcement of uncodified Section 803.100(B) of H.B. 49, thereby delaying the requirement that the plaintiffs adopt the centralized-administration provisions as municipal law. In February 2018, the trial court held a two-day preliminary-injunction hearing, and shortly thereafter, it entered a dispositive order that denied injunctive relief, rejected the complaint on the merits, and rendered judgment for the defendants.

{¶ 17} The Athens plaintiffs appealed to the Tenth District Court of Appeals, and the Elyria plaintiffs filed a separate appeal. The Tenth District

consolidated the appeals for decision, and by a two-to-one vote, it affirmed the trial court's judgment.[2] The court subsequently denied motions for reconsideration.

{¶ 18} The Athens plaintiffs and the Elyria plaintiffs separately appealed to this court. We accepted the appeals on the following propositions of law:

- "A State-administered, centralized system for reporting and collecting municipal net profits taxes, paid for by a tax on municipalities, violates the Home Rule Amendment of the Ohio Constitution." (Elyria plaintiffs; case No. 2019-0693.)
- "The Home Rule Amendment grants municipal corporations a general power of municipal taxation, and where a State law engulfs municipal corporations' general power of taxation, that State law is unconstitutional." (Athens plaintiffs; case No. 2019-0696.)

{¶ 19} The city of Akron also appealed, filing a second notice of appeal in case No. 2019-0696. The two appeals before us, case Nos. 2019-0693 and 2019-0696, were consolidated for oral argument, and we resolve them both in this decision.

II. ANALYSIS

A. Home rule and municipal taxation

{¶ 20} Article XVIII, Section 3 of the Ohio Constitution (the "Home Rule Amendment") provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws," and Article XVIII, Section 7 states that "[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the

2. In addition to the home-rule challenge, the Tenth District decision addresses a single-subject challenge to H.B. 49 along with other constitutional and procedural issues. None of the additional challenges or issues are before us.

provisions of section 3 of this article, exercise thereunder all powers of local self-government."

{¶ 21} We have consistently identified taxation as "one of the 'powers of local self-government' expressly delegated by the people of the state to the people of the municipalities," *Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 605, 693 N.E.2d 212 (1998), citing *State ex. rel. Zielonka v. Carrel*, 99 Ohio St. 220, 227, 124 N.E. 134 (1919); *see also New York Frozen Foods, Inc. v. Bedford Hts. Income Tax Bd. of Rev.*, 150 Ohio St.3d 386, 2016-Ohio-7582, 82 N.E.3d 1105, ¶ 29.

{¶ 22} In the area of taxation, the Ohio Constitution specifically authorizes the General Assembly to limit municipal home-rule power. Article XVIII, Section 13 confers on the General Assembly the authority to pass laws to "limit the power of municipalities to levy taxes and incur debts for local purposes." Moreover, Article XIII, Section 6 of the Constitution provides that the General Assembly has the authority to "restrict [municipalities'] power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

{¶ 23} In considering the home-rule provisions and the General Assembly's authority, we have held that " '[t]he Constitution authorizes the city to exercise part of the sovereign power, and in the proper exercise of that part it is immune from general laws.' " *Dies Elec. Co. v. Akron*, 62 Ohio St.2d 322, 325, 405 N.E.2d 1026 (1980), quoting *Froehlich v. Cleveland*, 99 Ohio St. 376, 391, 124 N.E. 212 (1919). Accordingly, with respect to municipal taxation, immunity from state law is the rule, with the exception being that the General Assembly may pass legislation that "limits" or "restricts" the power of municipalities to tax.

{¶ 24} During the first 85 years of home rule, this court held that if the General Assembly had enacted a tax of a particular type, the state occupied the field as to that type of tax and thereby implicitly preempted a similar municipal tax. *See*

Cincinnati v. Am. Tel. & Tel. Co., 112 Ohio St. 493, 147 N.E. 806 (1925), paragraph two of the syllabus. In 1998 we overruled the doctrine of implied preemption and held that a state tax law does not preempt municipal power unless it does so expressly. *Cincinnati Bell*, 81 Ohio St.3d 599, 693 N.E.2d 212, at syllabus.

B. The nature of the arguments

{¶ 25} Before us are two appeals. We will refer to appellants in case No. 2019-0693, which was filed and briefed by the Elyria plaintiffs, as "Elyria." With the exception of Akron, which filed a separate notice of appeal and briefs in case No. 2019-0696, we will refer to appellants in case No. 2019-0696 as "Athens." The various arguments advanced all involve questions of law, which we review de novo, *Cleveland v. State*, 157 Ohio St.3d 330, 2019-Ohio-3820, 136 N.E.3d 466, ¶ 15.

{¶ 26} Elyria concedes that the General Assembly may restrict the substantive content of tax ordinances that a city or village may enact but argues that the General Assembly does not have the power to control—and ultimately take over in part—the administration of a municipal tax that has been validly enacted. This argument focuses on the meaning of "levy" in Article XVIII, Section 13. Athens and Akron focus less on the term "levy" and more on the term "limit" in Article XVIII, Section 13; they assert that regardless of the precise scope of the term "levy," the General Assembly exceeded its power to impose limits on municipal authority in the tax area both by imposing a uniform municipal code in H.B. 5 and by imposing centralized administration in H.B. 49. Additionally, Athens challenges R.C. 718.85(B), under which the state retains .5 percent of municipal net-profits taxes it collects as unconstitutional and argues that that provision is not severable from centralized administration under H.B. 49.

C. The General Assembly has the power to impose limitations on both the enactment and the administration of municipal taxes

{¶ 27} We first turn to Elyria's contention that the General Assembly's authority to "limit the power of municipalities to levy taxes," Article XVIII, Section

13, enables it to prevent a municipality from imposing a specific tax but does not enable it to prevent a municipality from determining taxpayer liabilities and collecting taxes in relation to a validly enacted municipal tax. This argument centers on what it means for the General Assembly to have authority to limit the municipal power "to levy taxes." Does the term "levy" in Article XVIII, Section 13 mean only a municipality's legislative enactment of a tax or, as the state asserts, does it also include the administrative acts that the enactment requires—determining liabilities and collecting taxes? If the former is true, then the General Assembly lacked authority to impose centralized administration of the net-profits tax after it permitted municipalities to impose such a tax.

{¶ 28} The state contends that even if "levy" in Article XVIII, Section 13 has the restrictive meaning attributed to it by Elyria, the state still prevails, because Article XIII, Section 6 allows the General Assembly to "restrict [the municipalities'] power of taxation" and that section does not use the term "levy." Because we conclude that the state's interpretation of "levy" in Article XVIII, Section 13 is correct, we need not consider whether Article XIII, Section 6 grants the General Assembly any additional power to limit municipal taxation.

{¶ 29} We agree with the state that "levy" bears the broader rather than the more restrictive meaning. "Generally speaking, in construing the [Ohio] Constitution, we apply the same rules of construction that we apply in construing statutes." *Toledo City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 146 Ohio St.3d 356, 2016-Ohio-2806, 56 N.E.3d 950, ¶ 16. Typically, "[w]ords used in the Constitution that are not defined therein must be taken in their usual, normal, or customary meaning." *Id.*

1. The dictionary definitions of "levy" support the broader rather than the more restrictive interpretation

{¶ 30} In determining the "common and ordinary meaning" of words, courts may look to dictionaries. *See State ex rel. Lake Cty. Bd. of Commrs. v.*

Zupancic, 62 Ohio St.3d 297, 300, 581 N.E.2d 1086 (1991). In this case, the Tenth District cited two dictionary definitions from the early 20th century that support its view that the phrase "levy taxes" in Article XVIII, Section 13 encompasses administrative functions necessitated by a tax as well as the legislative enactment of the tax. 2019-Ohio-277, 119 N.E.3d 469, ¶ 44.

{¶ 31} In response, Elyria cites the current definition of the verb "levy" in *Black's Law Dictionary*: "[t]o impose or assess (a fine or a tax) by legal authority." *Black's* at 1091 (11th Ed.2019). Because the words "collect" and "administer" are absent from the definition, Elyria reasons, "levy" is limited to legislative enactment. That reasoning is faulty because the word "assess" plainly connotes administrative as well as legislative action. This is clear not only from the dictionary definition of "assess," *id.* at 144 (defining "assess" as "[t]o calculate the amount or rate of (a tax, fine, etc.)"), but also from the way the term is used in tax legislation, *see* R.C. 5739.03(B)(4) (authorizing the tax commissioner to issue a "notice of intent to levy an assessment" against a vendor). Notably, the example of the sales-tax-assessment statute just cited (R.C. 5739.03(B)(4)) connects "levy" with "assessment" and uses both terms in the context of administrative rather than legislative action. *See also* R.C. 319.30(A) (the county auditor, as assessor of real-estate taxes, "shall proceed to determine the sums to be levied upon each tract and lot of real property"). Thus, contrary to Elyria's assertion, the current definition of "levy" in *Black's* does not support Elyria's restrictive understanding of the term "levy" in Article XVIII, Section 13.

{¶ 32} Elyria then looks to the 1910 edition of *Black's*, which notes that the word "levy" is used in two different senses in reference to taxation and indicates that the "more proper[]" meaning is "to lay or impose a tax," *id.* at 714 (2d Ed.1910). The definition goes on to say, however, that the term can refer to the administrative assessment of a tax against a particular taxpayer as well as "the entire process of collecting the taxes." Elyria is reduced to arguing that the term in the

Constitution must have the meaning that the dictionary deems to be "more proper." This argument is not compelling.

{¶ 33} In support of its argument, Elyria also cites a 1914 edition of *Bouvier's Law Dictionary* for its definition of the noun phrase "tax levy." Although the phrase "tax levy" is often used to refer to the legislation by which a tax is imposed, *see* R.C. Chapter 5705, that does not limit the meaning of the term "levy" more generally—nor does the ordinary usage of "tax levy" necessarily define the scope of the differently worded phrase "power * * * to levy taxes" in Article XVIII, Section 13.[3]

{¶ 34} The dictionary definitions cited by Elyria militate strongly in favor of the conclusion that the term "levy" in the phrase "levy taxes" encompasses administrative actions such as determining the tax obligations of particular taxpayers. Moreover, the use of the term "levy" in the decisions of this court supports that conclusion. *See, e.g., Abraitis v. Testa*, 137 Ohio St.3d 285, 2013-Ohio-4725, 998 N.E.2d 1149, ¶ 4 (noting that the taxpayer advanced "specious (and often incomprehensible) arguments to oppose the tax assessments levied against him"); *Rowe-Reilly Corp. v. Tracy*, 85 Ohio St.3d 625, 627, 710 N.E.2d 694 (1999) ("The assessments levied against the appellant were for tax years 1988 through 1993"); *Dayton Press, Inc. v. Lindley*, 22 Ohio St.3d 112, 113, 489 N.E.2d 789 (1986) ("a hearing was held by the Tax Commissioner and the sales and use tax assessment levied against Dayton Press was affirmed"); *Lindner Bros., Inc. v. Kosydar*, 46 Ohio St.2d 162, 163, 346 N.E.2d 690 (1976) (court described the tax appeal as involving "a sales and use tax assessment levied against [an entity] and a sales tax assessment levied against [another entity]"); *Interstate Motor Freight Sys.*

3. Elyria also sets out three nonlegal-dictionary definitions of "levy" and claims that they limit the meaning of the word to "the legislative branch's determination to impose a tax or fine [and that they do not include in the meaning] the separate and distinct process by which the executive branch subsequently implements the process of realizing the tax or fine." We do not agree with Elyria's characterization of those definitions.

v. Donahue, 8 Ohio St.2d 19, 221 N.E.2d 711 (1966) (noting that "[a] highway use tax assessment * * * was levied against appellant by appellee, the Tax Commissioner of Ohio"); *Trotwood Trailers, Inc. v. Evatt*, 142 Ohio St. 197, 199, 51 N.E.2d 645 (1943) ("This cause is an appeal * * * from a decision of the Board of Tax Appeals affirming the finding of the Tax Commissioner confirming the sales tax assessment levied against the appellant").

2. Uses of the term "levy" in other provisions of the Ohio Constitution do not support a restrictive interpretation of the term in Article XVIII, Section 13

{¶ 35} Elyria points to a number of other provisions of the Ohio Constitution that employ forms of the word "levy" and contends that the passages that use that word in connection with a form of the word "collect" (e.g., the phrase "levying and collecting" is used in Article XII, Section 11) are inconsistent with a broad understanding of "levy," because interpreting "levy taxes" in Article XVIII, Section 13 to encompass administering taxes would mean that the term "collect" in those other provisions is superfluous. This argument relies on one of the basic rules of statutory construction—a court should " 'give effect to every word and clause' " and " 'avoid that construction which renders a provision meaningless or inoperative,' " *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, 773 N.E.2d 536, ¶ 26, quoting *State ex rel. Myers v. Rural School Dist. of Spencer Twp. Bd. of Edn.*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917); *see also* R.C. 1.47(B).

{¶ 36} Reading "levy" (and other forms of the word) to encompass administration as well as enactment does not violate the above-noted rule of construction, because although giving "levy" the broader meaning creates overlap with "collect," each word continues to have an additional meaning that the other word does not have. Specifically, "levy" includes a legislative enactment that creates tax obligations and "collect" does not; "collect" includes the actual receipt of money payments, whereas "levy" focuses on the creation—legislative or

administrative—of the legal obligation to make such payments in the first place. Because mere overlap in meaning does not violate the above-noted rule of construction, "levy taxes" may properly be understood to encompass tax administration in various constitutional provisions. *See In re BankVest Capital Corp.*, 360 F.3d 291, 301 (1st Cir.2004) (the presence of "substantial overlap among the provisions of" the statute at issue was "not the same as surplusage").

3. Elyria's corpus-linguistics analysis is unpersuasive

{¶ 37} Elyria urges us to employ corpus linguistics to discern the meaning of "levy." "Corpus linguistics allows lawyers to use a searchable database to find specific examples of how a word was used at any given time." *Wilson v. Safelite Group, Inc.*, 930 F.3d 429, 440 (2019) (Thapar, J., concurring in part and concurring in judgment). According to Judge Thapar, "[i]ts foremost value may come in those difficult cases where statutes split and dictionaries diverge." *Id*. Consistently with this last point, an opinion cited by Judge Thapar in *Wilson* predicates the use of corpus linguistics on the need to (1) "openly acknowledge the ambiguity" when "confronted with a contest between two competing constructions that each find tenable support in our lexicon" and (2) "check [the judge's] intuition against publicly available means for assessing the ordinary meaning of a statutory phrase," *State v. Rasabout*, 2015 UT 72, 356 P.3d 1258, ¶ 55-56 (Lee, A.C.J., concurring in part and concurring in judgment).

{¶ 38} Recourse to corpus linguistics is unnecessary in this case because we do not confront the type of lexical ambiguity that requires additional means of establishing the ordinary meaning of a word. Every source we have consulted indicates that the term "levy" may encompass administrative as well as legislative acts. As a result, this is not a case in which the dictionary " 'fails to dictate the meaning that the statutory terms "must bear" in this context.' " *Id.* at ¶ 47 (Durrant, C.J., concurring in part and concurring in judgment), quoting *State v. Canton*, 2013 UT 44, 308 P.3d 517, ¶ 14.

{¶ 39} Elyria's corpus-linguistics analysis is unpersuasive. Elyria's search of a corpus of United States Supreme Court opinions collected by English-Corpora.org and available online yielded 277 instances of the court's using the phrase "to levy and collect" in reference to taxes. These data, says Elyria, "reinforce[] the notion that merely saying 'to levy' in reference to a tax does not include 'collection' of that tax." Although that may be true, that does not mean that the phrase "levy taxes" does not include the administration of the tax, as we have already discussed.

{¶ 40} Next, Elyria argues that the result of the search for the phrase "to levy" in the corpus of contemporary American English collected by English-Corpora.org "suggests that when writers use the infinitive phrase 'to levy' (without including 'and collect'), they are referring to the exercise of the power to impose a financial condition, such as a tax, fine, special assessment, or the like" and so the data "do[] not suggest that 'to levy' further implies the machinery by which the financial assessment is collected by the governing authority so empowered." Here again, "levy" in the sense of imposing a financial obligation is an administrative act when it involves determining the specific liability of a taxpayer under a general tax law. Elyria does not explain how the data from this corpus "suggest[]" the conclusion Elyria reaches, and we decline to attach any significance to the data.

{¶ 41} Finally, Elyria states that a search of English-Corpora.org's corpus of historical American English for how the phrase "to levy" was used during the time immediately preceding adoption of the 1912 Ohio Constitution resulted in 21 instances of the use of the phrase. Over two-thirds of the references to "levy" were clearly used in relation to a tax, fine, duty, or contribution. In none of those instances, says Elyria, did the term appear to involve an administrative action relating to the collection of the obligation imposed. But in our view, the data are more ambiguous than that—we see at least a few instances in the search result provided in Elyria's brief in which "levy" may (depending on context, which is not

available in the chart provided in Elyria's brief) refer to administrative as well as legislative acts. Thus, the data do not support Elyria's conclusion.

4. There is no canon of construction calling for a restrictive interpretation of "levy" in the phrase "levy taxes"

{¶ 42} Elyria argues that "Article XVIII, Section 13 is subject to the principle that 'statutes granting privileges or relinquishing rights are to be strictly construed,' " quoting *Caldwell v. United States*, 250 U.S. 14, 20, 39 S.Ct. 397, 63 L.Ed. 816 (1919). In *Caldwell*, the United States Supreme Court restrictively construed a license granted by Congress to a private party, which is not analogous to the issue we confront here. Nor does *Piqua Bank v. Knoup*, 6 Ohio St. 342 (1856), provide any support for Elyria's position: Elyria cites the dissenting opinion, which is not law.

5. The restrictive construction of "incur debt" in Article XVIII, Section 13, does not imply a restrictive meaning of "levy taxes"

{¶ 43} Athens argues that certain decisions from this court call for a restrictive view of the General Assembly's power to limit the power of municipalities to levy taxes. The main cases it relies on are *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22, 268 N.E.2d 581 (1971), and *Dies*, 62 Ohio St.2d 322, 405 N.E.2d 1026. Those cases are inapposite here because both apply a limiting construction to Article XVIII, Section 13's grant of power to the General Assembly to limit municipalities' power to incur debt and neither addresses the scope of the General Assembly's power under that section to limit municipalities' power to levy taxes.

{¶ 44} Any obligation of funds in the ordinary course of municipal business constitutes "incurring debt" in the broader sense, with the result that the General Assembly's power to limit the incurring of debt, if extended to its fullest connotation, would allow the state to control daily operations of municipalities. As this clearly would be inconsistent with the purpose of the Home Rule Amendment,

Cronin and *Dies* held that that the General Assembly's power under the Constitution with respect to incurrence of debt is not expansive, but extends only to such acts as "limit[ing] a municipality's aggregate indebtedness," *Cronin* at 27, or restricting " 'the extent of bonded indebtedness for local purposes,' " *Dies* at 328, quoting *State ex rel. Toledo v. Weiler*, 101 Ohio St. 123, 130, 128 N.E. 88 (1920). By contrast, limiting a municipality's power to tax does not lead to the same kind of potential for comprehensive state control of municipal operations.

D. Prescribing a municipal income-tax code and imposing centralized administration constitute valid acts of limitation

{¶ 45} Having concluded that the General Assembly's power to limit the levy of municipal taxes includes the power to limit administration of a validly enacted tax, we turn to the contention that the power to limit does not include the power to impose centralized administration. Akron asserts that Article XVIII, Section 13 has never been interpreted "as granting the authority to the State to take over the operations of [municipal] government or exercise total control over all aspects of municipal taxation." Athens contends that the power to limit or restrict local taxation "do[es] not authorize the State to commandeer the municipal taxing authority for itself" and that the state's power to "limit" does not allow it to achieve indirectly what the Constitution does not directly authorize it to do.

{¶ 46} In approaching this issue, we consider whether establishing centralized administration of municipal taxes can be understood as a constitutionally proper act of limitation by the General Assembly. In *Gesler v. Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76, 2013-Ohio-4986, 3 N.E.3d 1177, the Geslers sought city-income-tax refunds under a tax ordinance that explicitly exempted income from Schedule C. During the period relevant in that case, R.C. 718.01 prohibited a city that imposed an income tax from exempting that income. *See id.* at ¶ 15-16. We held that the Geslers were entitled to refunds inasmuch as "Worthington chose not to tax Schedule C income, and the General

Assembly cannot limit or restrict a power of taxation that Worthington did not exercise." *Id.* at ¶ 22. Further, we stated that "the General Assembly cannot command Worthington to impose a tax on Schedule C income when Worthington has chosen not to tax that income, because such a requirement is not an act of limitation." *Id.*

{¶ 47} After *Gesler* was decided, the General Assembly passed H.B. 5, which invoked the General Assembly's authority to broadly preempt municipal income taxes based on the fact that the state has imposed its own income tax, R.C. Chapter 5747. *See* R.C. 715.013(A) ("Except as otherwise expressly authorized by the Revised Code, no municipal corporation shall levy a tax that is the same as or similar to a tax levied under Chapter * * * 5747 * * * of the Revised Code"). The provisions enacted under H.B. 5 permit municipalities to tax income on the conditions that the municipality do so in accordance with the provisions of R.C. Chapter 718 and that it explicitly incorporate those provisions into its tax code. R.C. 715.013(B) and 718.04(A).

{¶ 48} Athens predicates its challenge to centralized administration under H.B. 49 in part on a broader challenge to H.B. 5. Just as H.B. 5 mandates a uniform municipal-income-tax code by conditioning the power to impose the tax on the municipality's incorporating the state-prescribed code into its local tax ordinance, H.B. 49 imposes centralized administration by conditioning the municipal power to impose the tax on the municipality's incorporating R.C. 718.80 through 718.95 into its local tax ordinance, H.B. 49 at uncodified Section 803.100(B). Athens maintains that both of these acts exceed the state's power to impose limits and that this court's caselaw, including *Gesler,* "leads to the conclusion that the limiting power of the State does not include the power broadly to define what local tax laws must look like."

{¶ 49} We disagree. The enactment of H.B. 5 and H.B. 49 converted the affirmative requirements of R.C. Chapter 718 into adjuncts of the broader

preemption of municipal income taxes. After H.B. 5, a municipality that is able to enforce its ordinance at all has incorporated the prescribed provisions of state law. And once R.C. Chapter 718 has been explicitly incorporated into a municipality's tax code, any other provision of the municipality's ordinance at odds with it would be an internal conflict within municipal law. Had the provisions of H.B. 5 and H.B. 49 been in effect during the relevant period in *Gesler*, 138 Ohio St.3d 76, 2013-Ohio-4986, 3 N.E.3d 1177, the outcome of that case would likely have been different.

{¶ 50} It is clear that we cannot question the General Assembly's authority to impose a uniform municipal income-tax code through H.B. 5, and by extension to impose centralized administration of the tax under H.B. 49, without calling into question the preemptive authority on which it is logically based. As we have previously discussed, that preemptive authority is plenary, at least in areas in which the state itself is imposing regulations, taxes, or fees. *See Panther II Transp., Inc. v. Seville Bd. of Income Tax Rev.*, 138 Ohio St.3d 495, 2014-Ohio-1011, 8 N.E.3d 904, ¶ 23 (taxpayer established its exemption from municipal income tax by "showing that it was regulated as a motor-transportation company and that former R.C. 4921.25 preempted local taxes as applied to such entities"). Throughout the history of municipal home rule in this state, it has been well understood that the state has broad preemptive power in the municipal-tax area. *See Cincinnati v. Roettinger*, 105 Ohio St. 145, 156, 137 N.E. 6 (1922) (Article XVIII, Section 13 "reiterated some of the provisions which were already generally stated" in another article of the Constitution "for the purpose of special emphasis and in order that there might be no mistake as to the power of the Legislature over the matter of taxation by municipalities notwithstanding the liberal concessions made to municipalities in other sections of article XVIII"); *Angell*, 153 Ohio St. 179, 91 N.E.2d 250, at paragraph one of the syllabus ("Ohio municipalities have the power to levy and collect income taxes * * * subject to the power of the General Assembly

to limit the power of municipalities to levy taxes under Section 13 of Article XVIII or Section 6 of Article XIII of the Ohio Constitution"). Although we have more recently held that a state law preempts municipal power only when it does so explicitly, *Cincinnati Bell*, 81 Ohio St.3d 599, 693 N.E.2d 212, at syllabus, we did not question the General Assembly's "constitutional prerogative" to exercise that preemptive authority, *id.* at 606.

{¶ 51} We hold that the General Assembly's authority to limit the power of municipalities to tax allows it to broadly preempt municipal income taxes and to require that such taxes be imposed in strict accordance with the terms dictated by legislation passed by the General Assembly. Specifically, we agree with the Tenth District's determination that "[b]ecause Article XVIII, Section 13 permits the General Assembly to limit the municipalities' power to levy taxes, the General Assembly can require municipalities to enact legislation that accomplishes this aim." 2019-Ohio-277, 119 N.E.3d 469, at ¶ 51.

{¶ 52} Akron maintains that Article XVIII, Section 13 has never been interpreted to grant to the state "authority to take over the internal operations of local self-government."[4] The laws enacted by H.B. 49 do not take over a municipality's own internal operations; instead, they make administration of municipal net-profits tax, for those taxpayers who elect centralized administration,

4. On a more limited scale, the state mandated centralized administration 20 years ago in relation to municipal net-profits taxes of electric companies. The General Assembly enacted a centralized administration-and-collection regime similar to the one at issue in this case. Sub.H.B. No. 483, 148 Ohio Laws, Part III, 5155 ("H.B. 483) (title of the act states that the act's purpose is "to prescribe a uniform set of procedures and remedies regarding municipal taxation of electric light company income [and] to provide for the collection of municipal taxes on those companies by the state"); *see also* R.C. Chapter 5745. The General Assembly later added the taxation of telephone companies to this regime. Am.Sub.H.B. No. 95, 150 Ohio Laws, Part I, 396, and Part II, 2119. Also, as it did in H.B. 49, in H.B. 483, the General Assembly directed a percentage of the tax proceeds to the "municipal income tax administrative fund" in the state treasury—the same fund used under H.B. 49 for the .5 percent of net-profits taxes retained, *id.* at 5170-5171; *see also* R.C. 5745.03(A), but because the municipalities did not contest that provision, the courts have not ruled on its constitutionality.

an operation of the state tax department. The state law acknowledges that the state thereby becomes a fiduciary for the municipalities whose taxes it collects. *See* R.C. 718.84(F)(4). We conclude that the General Assembly acted within its authority when it enacted centralized administration of municipal net-income taxes in H.B. 49.

E. The General Assembly's appropriation of .5 percent of the municipal net-tax proceeds is not a valid act of limitation

{¶ 53} According to Athens, R.C. 718.85(B) retains "a mandatory one-half percent of all net profits taxes filed with the State * * * as a fee for administering the net profits tax system," (emphasis deleted), and it argues that the "[m]unicipalities' plenary power of taxation must include the right to keep the tax revenues they raise," or else "the power of taxation is illusory."[5] In defending the retention, the state calls it neither a fee nor a tax, stating that R.C. 718.85(B) requires "municipalities to bear the [administrative] costs of the taxes they impose—costs that would previously have been borne by the municipalities directly, but that are now borne by the State in the first instance."

{¶ 54} We conclude that whether the .5 percent retention is viewed as a fee or as a tax, the General Assembly had no authority to impose it. We first consider whether R.C. 718.85(B) can be upheld as a fee. " 'The classic "regulatory fee" is imposed by an agency upon those subject to its regulation.' " *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916, ¶ 28,

5. Athens also challenges R.C. 718.80(C)(3), which provides that if a municipality fails to comply with its duty to supply the state with tax-rate information and other specified taxpayer information, the state budget director may withhold 50 percent of payments otherwise due to a municipality until it does comply. Athens asserts that the General Assembly lacks authority "for the State to seize and retain municipal revenues or funds." In response, the state points out that the plain text of R.C. 718.80(C)(3) does not permit the state to retain the funds after the municipality complies with the law and, thus, the provision does not allow the state to "seize and retain municipal revenues"; instead, it functions as an incentive for municipalities to timely comply with notification requirements. We find the state's argument to be persuasive.

quoting *San Juan Cellular Tel. Co. v. Pub. Serv. Comm. of Puerto Rico*, 967 F.2d 683, 685 (1st Cir.1992).

{¶ 55} Unlike regulated private actors, however, municipalities exercise constitutionally conferred "powers of local self-government," Article XVIII, Section 3, when they impose net-profits taxes. Accordingly, when municipalities properly exercise their home-rule powers, they are " 'immune from general laws.' " *Dies*, 62 Ohio St.2d at 325, 405 N.E.2d 1026, quoting *Froehlich*, 99 Ohio St. at 391, 124 N.E. 212. For this reason, municipalities exercising home-rule authority do not qualify as persons "subject to" the state's "regulation" and the General Assembly's general power to legislate under Article II, Section 1 of the Ohio Constitution does not support the imposition of a fee.

{¶ 56} It follows that the power to impose a regulatory fee, if it exists, must emanate from a specific constitutional grant—and Article XVIII, Section 13 and Article XIII, Section 6 are the only viable candidates. Prescribing the substantive and procedural contours of the municipal income tax, as the General Assembly did in H.B. 5, is a legitimate exercise of its power to determine whether a particular kind of tax may be imposed at all. By contrast, allowing the state to retain a portion of the tax proceeds to defray its expenses cannot be seen as a legitimate exercise of the General Assembly's power to limit or restrict municipal taxation.[6] We therefore hold that imposing a regulatory fee measured by a percentage of municipal-tax proceeds is not an authorized act of limitation under Article XVIII, Section 13 or a valid restriction under Article XIII, Section 6.

6. Amici Ohio Society of Certified Public Accountants et al. argue that state law directs a portion of certain enumerated taxes (e.g., school-district income tax, R.C. 5747.03) to the state tax department to defray administrative expenses. But those taxes are different from the taxes at issue here because, although they involve locally voted levies, they are ultimately imposed under the enabling authority of state law—not, as in this case, pursuant to an exercise of home-rule authority.

{¶ 57} If viewed as a tax, the .5 percent retention fares no better. Quite simply, Article XVIII, Section 13 and Article XIII, Section 6 confer the power to limit or restrict municipal actions, not the power to tax municipal revenues.

{¶ 58} There is one final question for our resolution: Can the portion of R.C. 718.85 providing for .5 percent retention of municipal taxes be severed so as to save the provisions of H.B. 49 that have not been found to offend the Constitution? *State ex rel. Sunset Estate Properties, L.L.C. v. Lodi*, 142 Ohio St.3d 351, 2015-Ohio-790, 30 N.E.3d 934, ¶ 16. For severance to be appropriate, the provision to be severed must satisfy a three-pronged test: (1) the provision must be capable of separation so that the constitutional portion of the statutory scheme may stand by itself, (2) the provision must not be so connected with the general scope of the statutory scheme that the apparent intent of the legislature cannot be given effect if the provision is stricken, and (3) it should not be necessary to insert words or terms in order to separate the constitutional from the unconstitutional portions of the statutory scheme. *Cleveland v. State*, 138 Ohio St.3d 232, 2014-Ohio-86, 5 N.E.3d 644, ¶ 19; *see also Simmons-Harris v. Goff,* 86 Ohio St.3d 1, 8, 711 N.E.2d 203 (1999).

{¶ 59} The retention provision easily satisfies the severance criteria. Regarding the first prong, the centralized-administration scheme can clearly stand on its own, as long as the state finds an alternative way to finance it. Regarding the second prong—once again, as long as the state finds other revenue—the intent of the legislature to provide a more convenient compliance method for municipal net-profits taxpayers can be fully effectuated without the .5 percent retention. Moreover, the state itself takes the position that if the .5 percent retention is held unconstitutional, that "would not justify invalidating H.B. 5 and H.B. 49 in their entirety." Finally, the only linguistic operation necessary to effectuate the severance is to subtract words from R.C. 718.85(B), namely, those words specifying diversion of .5 percent to the municipal-income-tax administrative fund.

After subtracting the constitutionally offensive words, R.C. 718.85(B) states: "The tax commissioner shall immediately forward to the treasurer of state all amounts the commissioner receives pursuant to sections 718.80 to 718.95 of the Revised Code. The treasurer shall credit such amounts to the municipal net profit tax fund which is hereby created in the state treasury."

{¶ 60} Accordingly, we hold that the .5-percent-retention provision is unconstitutional, and we sever it.

III. CONCLUSION

{¶ 61} For the foregoing reasons, we affirm in part and reverse in part the judgment of the court of appeals. We affirm the portion of the court of appeals' judgment upholding the centralized-administration system imposed by H.B. 49, but we reverse the portion of the judgment upholding the .5 percent retention of municipal net-profits taxes by the state. We also remand the cause to the trial court and instruct it to enter judgment in accordance with this decision and to take whatever further action may be appropriate to effectuate that judgment.

Judgment affirmed in part
and reversed in part,
and cause remanded.

O'CONNOR, C.J., and FISCHER and STEWART, JJ., concur.

KENNEDY, J., concurs in part and dissents in part, with an opinion.

DEWINE, J., concurs in part and dissents in part, with an opinion joined by FRENCH, J.

KENNEDY, J., concurring in judgment only in part and dissenting in part.

{¶ 62} Because the General Assembly's power to *limit* tax levies does not permit it to enact legislation that *abolishes* municipal income taxation and *compels* a municipality to adopt a uniform statutory scheme for imposing and administering

a municipal income tax, I dissent from the portion of the majority's judgment affirming the court of appeals. The people of Ohio adopted the Home Rule Amendment, Article XVIII of the Ohio Constitution, to remove statutory control over cities and villages by the General Assembly, granting to municipalities power over local self-government, including the power of taxation. *See Cincinnati Bell Tel. Co. v. Cincinnati*, 81 Ohio St.3d 599, 605, 693 N.E.2d 212 (1998). However, the majority's holding permits the General Assembly to eliminate the municipal power of taxation altogether and to compel the cities and villages of Ohio to cede their sovereignty over matters of local self-government to the state in exchange for revenue essential to their survival. That holding cannot be squared with the plain language of the Home Rule Amendment. Accordingly, I would reverse the judgment of the Tenth District Court of Appeals.

{¶ 63} Prior to 1912, "the source and extent of municipal power was derived from the enactments of the General Assembly." *Cincinnati Bell Tel. Co.* at 605. "[M]unicipalities could exercise only those powers delegated by statute." *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 582, 621 N.E.2d 696 (1993). "Such power, being legislative only, could be withdrawn from the municipalities, or amended, at any session of the Legislature, * * * and there was neither stability of law, touching municipal power, nor sufficient elasticity of law to meet changed and changing municipal conditions." *Perrysburg v. Ridgway*, 108 Ohio St. 245, 255, 140 N.E. 595 (1923).

{¶ 64} To remedy this problem, the people of this state in 1912 adopted the Home Rule Amendment, which provides that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Article XVIII, Section 3, Ohio Constitution.

{¶ 65} "Passage of the Home Rule Amendment provided municipalities with 'full and complete political power in all matters of local self government.' "

Cincinnati Bell Tel. Co., 81 Ohio St.3d at 605, 693 N.E.2d 212, quoting *Perrysburg* at 255; *see* Article XVIII, Section 3, Ohio Constitution (granting municipalities authority to "exercise all powers of local self-government"). This court has long recognized that the power of local governments to levy taxes is included within this broad grant of authority, *Put-in-Bay v. Mathys*, ___ Ohio St.3d ___, 2020-Ohio-4421, ___ N.E.3d ___, ¶ 12, citing *State ex rel. Zielonka v. Carrel*, 99 Ohio St. 220, 227, 124 N.E. 134 (1919).

{¶ 66} But although the Ohio Constitution grants broad powers of local self-government to municipalities, the scope of those powers is not without limits. *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 541, 697 N.E.2d 181 (1998). Home-rule authority granted under Article XVIII, Section 3 is subject to other provisions of the Constitution. *Id.*; *State ex rel. Semik v. Cuyahoga Cty. Bd. of Elections*, 67 Ohio St.3d 334, 336, 617 N.E.2d 1120 (1993).

{¶ 67} The Ohio Constitution places a check on municipal authority to levy taxes. Article XIII, Section 6 of the Ohio Constitution, which was adopted as part of the 1851 Constitution, directs the General Assembly to "provide for the organization of cities, and incorporated villages, by general laws; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power." Article XVIII, Section 13, which was adopted as part of the Home Rule Amendment in the 1912 Constitution, enables the General Assembly to pass laws "to limit the power of municipalities to levy taxes and incur debts for local purposes."

{¶ 68} This court has recognized that "the intention of the Home Rule Amendment was to eliminate statutory control over municipalities by the General Assembly," *Cincinnati Bell Tel. Co.* at 605, and we have explained that "the Constitution requires that the provisions allowing the General Assembly to limit municipal taxing power be interpreted in a manner consistent with the purpose of home rule," *id*.

{¶ 69} We have therefore held that the General Assembly's power to limit municipal taxation and indebtedness "does not authorize the Legislature to annul or curtail the powers expressly granted by the Constitution." *State ex rel. Toledo v. Weiler*, 101 Ohio St. 123, 129-130, 128 N.E. 88 (1920). "It may limit the levies of taxes and the extent of bonded indebtedness for local purposes, but it may not, either by action or inaction, preclude the exercise of power expressly conferred by the Constitution, or deny the use of its revenues from taxation or its general credit for any purpose authorized by constitutional provision or for any purpose within the powers of local self-government thereby conferred." *Id.* at 130.

{¶ 70} We cited *Weiler* with approval in *Dies Elec. Co. v. Akron*, in which we held that neither Article XIII, Section 6 nor Article XVIII, Section 13 authorizes the state to dictate the retainage provisions for a contract for improvements to municipal property. 62 Ohio St.2d 322, 327-328, 405 N.E.2d 1026 (1980). Considering the General Assembly's authority to limit a municipality's aggregate indebtedness, we explained that the General Assembly "may not prescribe the procedure which a charter municipality must follow in limiting its expenditures arising from contracts entered into under its Home Rule powers, so long as such expenditures do not exceed the aggregate amount of indebtedness authorized by state law." *Id*. at 328. That is, we treated Article XVIII, Section 13 as allowing the General Assembly to limit *the extent* of municipal indebtedness. We did not suggest that laws could be passed to prohibit municipalities from taking on any debt.

{¶ 71} This court's statements indicating that the General Assembly's authority to "limit" or "restrict" municipal power to levy taxes does not encompass the authority to annul, curtail, deny, or preclude the exercise of that power are consistent with the plain meanings of the words "limit" and "restrict." In giving undefined words in the Constitution their usual, normal, or customary meaning, we rely on their dictionary definitions. *E.g.*, *State v. Carswell*, 114 Ohio St.3d 210,

2007-Ohio-3723, 871 N.E.2d 547, ¶ 11-12; *State ex rel. King v. Summit Cty. Council*, 99 Ohio St.3d 172, 2003-Ohio-3050, 789 N.E.2d 1108, ¶ 35-36; *State ex rel. Lake Cty. Bd. of Commrs. v. Zupancic*, 62 Ohio St.3d 297, 300-301, 581 N.E.2d 1086 (1991); *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 46-47, 197 N.E.2d 328 (1964).

{¶ 72} The 1911 edition of *Webster's New International Dictionary* defines the verb "limit" to mean "[t]o assign to or within certain limits" and "[t]o apply a limit to, or set a limit or bounds for." *Id.* at 1252. It also defines the noun "limit" to mean "[t]hat which terminates, circumscribes, restrains, or confines; the bound, border, or edge; the utmost extent." *Id*. The word "restrict" is synonymous; it means "[t]o restrain with bounds; to limit; to confine." *Id*. at 1819. These meanings persist today. *See Webster's Third New International Dictionary* 1312, 1937 (2002) (defining "limit" and "restrict").

{¶ 73} To limit or restrict is to set *the extent* of the bounds or authority beyond which something may not go. *See Weiler*, 101 Ohio St. 123, 128 N.E. 88, at paragraph two of the syllabus (home-rule power of local self-government is subject to "the limitation prescribed by the Legislature as to the extent of general tax levies"); *State ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cty*., 120 Ohio St. 464, 482-483, 166 N.E. 407 (1929) ("It is therefore the province of the General Assembly to determine the general governmental policy and the maximum of the extent of the imposition and collection of taxes for all purposes in the state"). These words—"limit" and "restrict"—are not synonymous with the words "abolish" or "eliminate."

{¶ 74} Therefore, Article XIII, Section 6 and Article XVIII, Section 13 allow the General Assembly to restrain or confine the municipal power of taxation, but it may not abolish or eliminate—or annul, curtail, deny, or preclude—that power altogether.

{¶ 75} However, R.C. 715.013(A) precludes municipalities from imposing a wide range of taxes (except when otherwise expressly authorized by statute), including income tax (R.C. Chapter 5747), sales tax (R.C. Chapter 5739), use tax (R.C. Chapter 5741), and gross-receipts tax (R.C. Chapter 5751), among many others. Relevant here, the General Assembly enacted 2014 Sub.H.B. No. 5 ("H.B. 5") to preempt municipal income-taxation ordinances enacted under home-rule authority. R.C. 715.013 and 718.04(A) deny municipalities the power to enact their own income-tax provisions and instead permit the collection of an income tax only if municipalities adopt the statutory scheme set forth in R.C. Chapter 718 for levying taxes. The General Assembly went further in 2017 Am.Sub.H.B. No. 49 ("H.B. 49") and created additional administrative provisions for municipal income taxes, commandeering the collection of taxes owed by municipal net-profits taxpayers and charging cities a fee for doing it. R.C. 718.85(B).

{¶ 76} The majority determines that "the General Assembly's authority to limit the power of municipalities to tax allows it to broadly preempt municipal income taxes and to require that such taxes be imposed in strict accordance with the terms dictated by legislation passed by the General Assembly." Majority opinion at ¶ 51. But neither Article XIII, Section 6 nor Article XVIII, Section 13 permits the General Assembly to abolish or eliminate municipal income taxation altogether. Taken to its logical conclusion, the majority's reasoning permits the General Assembly to abolish all forms of municipal taxation and condition the collection of any revenue on the adoption of a wholly statutory taxation scheme—or even a wholly statutory form of government that surrenders all home-rule authority to the state.

{¶ 77} The power to tax is undoubtedly included in the "general, broad grant of power that municipalities enjoy under Article XVIII," *Cincinnati Bell Tel. Co.*, 81 Ohio St.3d at 605, 693 N.E.2d 212, "for without this power local government in cities could not exist for a day," *Zielonka*, 99 Ohio St. at 227, 124

N.E. 134. "It is a known fact that the necessary expense incident to the maintenance of the government of a modern city transcends all other forms of governmental expense." *Id*. "[E]xperience teaches us that the exercise of this power is the highest and most necessary attribute of government. Without it government must cease to exist * **." *Id*. at 222.

{¶ 78} Because tax revenue is essential to the exercise of home-rule authority, any statute that conditions the ability to levy taxes on enacting whatever ordinance the General Assembly demands is in conflict with the Home Rule Amendment's grant of power to municipalities to control matters of local self-government.

{¶ 79} The United States Supreme Court's decisions discussing Congress's attempts to commandeer state governments by coercing state action through the federal spending power provide a helpful analogy. The Supreme Court has struck down federal laws seeking to commandeer a state's legislative or administrative authority for federal purposes. For example, the court in *Printz v. United States* invalidated a federal statute that compelled state law-enforcement officers to perform background checks on purchasers of firearms. 521 U.S. 898, 117 S.Ct. 2365, 138 L.Ed.2d 914 (1997). In *New York v. United States*, the court held that a federal statute compelling states either to take title to nuclear waste—in effect, compelling the state to subsidize nuclear-waste disposal—or enact a specified regulatory scheme was unconstitutional. 505 U.S. 144, 176, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992). The court noted that the federal and state governments are separate sovereigns and that Congress is not empowered to regulate the states. *Id*. at 166.

{¶ 80} Similarly, "while Congress may use its spending powers to encourage the states to act, it may not coerce the states into action. If the Congressional action amounts to coercion rather than encouragement, then that action is not a proper exercise of the spending powers but is instead a violation of

the Tenth Amendment." *West Virginia v. United States Dept. of Health & Human Servs.*, 289 F.3d 281, 286-287 (4th Cir.2002).

{¶ 81} For example, five justices on the United States Supreme Court concluded that by conditioning the continued receipt of all federal Medicaid dollars on a state's expansion of Medicaid benefits under the Patient Protection and Affordable Care Act, Congress exceeded the spending power by coercing states into adopting federal prerogatives. *See Natl. Fedn. of Indep. Business v. Sebelius*, 567 U.S. 519, 585, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012) (plurality opinion) (explaining that Congress had crossed the line between persuasion and coercion by conscripting states into the federal bureaucracy); *id.* at 681 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting) ("In structuring the [Affordable Care Act], Congress unambiguously signaled its belief that every State would have no real choice but to go along with the Medicaid Expansion. If the anticoercion rule does not apply in this case, then there is no such rule").

{¶ 82} In contrast is *South Dakota v. Dole*, in which the court held that the line between persuasion and coercion had not been crossed when Congress had directed "that a State desiring to establish a minimum drinking age lower than 21 lose a relatively small percentage of certain federal highway funds." 483 U.S. 203, 211, 107 S.Ct. 2793, 97 L.Ed.2d 171 (1987). The threat of losing 5 percent of federal highway funds amounted to only "relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose." *Id*.

{¶ 83} These lines of analysis are instructive here. The General Assembly's power to limit and restrict municipal tax levies does not authorize it to compel a municipality to enact a statutory scheme of taxation. As this court explained in *Gesler v. Worthington Income Tax Bd. of Appeals*, "the General Assembly cannot command [a municipality] to impose a tax on Schedule C income when [the municipality] has chosen not to tax that income, because such a requirement is not

an act of limitation." 138 Ohio St.3d 76, 2013-Ohio-4986, 3 N.E.3d 1177, ¶ 22. Likewise, the General Assembly cannot command a municipality to enact the broad scheme of municipal income taxation set forth in R.C. Chapter 718.

{¶ 84} The General Assembly cannot do indirectly what it cannot do directly. The coercion in H.B. 5 and H.B. 49 is tantamount to an unconstitutional command in violation of municipal sovereignty. This legislation deprives municipalities of the power to impose and collect income-tax revenue unless they enact ordinances in compliance with statutory provisions. Instead of limiting municipal taxing authority, H.B. 5 and H.B. 49 abolish it and compel municipalities to adopt a specific system of imposing and administering an income tax by holding municipal revenue hostage. However, the Ohio Constitution has not granted the General Assembly the power to coerce or compel municipalities in this state to enact legislation in areas of local self-government. Nor does the Constitution authorize the legislature to abolish municipal taxation altogether or to commandeer the collection, administration, and enforcement of the municipalities' own tax systems.

{¶ 85} The majority's decision today is inconsistent with the language of the Constitution adopted by the people in 1912. The people of this state acted to end the General Assembly's unfettered control over municipal self-government, subject to the legislature's authority to limit the power to levy taxes as an exception to the general grant of home-rule authority. This reflects a "balanced delegation of power, by the people, to municipalities and the General Assembly with respect to municipal taxing power." *Cincinnati Bell Tel. Co.*, 81 Ohio St.3d at 606, 693 N.E.2d 212. This court should not upset that careful balance by interpreting "the specific limiting power of the General Assembly" to "engulf the general power of taxation delegated to municipalities." *Id*. at 606-607. That is, the exception should not swallow the rule.

{¶ 86} In sum, H.B. 5 and H.B. 49 do not limit or restrict the municipal taxing power; rather, in derogation of the Home Rule Amendment, this legislation abolishes municipal authority to impose and collect an income tax and compels cities and villages in Ohio to adopt a statutory scheme of tax administration. Because these provisions exceed the authority granted to the General Assembly by the Ohio Constitution, I would reverse the judgment of the court of appeals in full. The majority does not. I therefore dissent from the portion of the majority's judgment affirming the court of appeals' judgment upholding the abolishment of municipal income taxation.

DEWINE, J., concurring in part and dissenting in part.

{¶ 87} The majority correctly determines that it is within the legislature's constitutional authority to provide for the centralized administration of the net-profits tax. But then, somehow, it finds that the state violates the Ohio Constitution when it collects a small administrative fee to defray some of the cost of the service it provides. Nothing in our Constitution supports the majority's holding on the fee issue, so I dissent from that part of its judgment.

{¶ 88} One would think that the authority to impose a fee to defray the administrative costs goes hand in hand with the legislature's power to provide for centralized administration of the net-profits tax. But the majority tweezes the fee from the rest of the scheme, and because it can identify no provision in the Ohio Constitution explicitly authorizing such a fee, decrees it unconstitutional.

{¶ 89} This mode of analysis might make sense if we were adjudicating a claim about the enumerated powers of the federal government under the United States Constitution. But that is not what is before us. This is a question about the authority of state government. As this court has explained,

> while the federal Constitution is a delegation of powers, the state Constitution is a limitation of powers. In other words, an act of Congress is not valid unless the federal Constitution authorizes it. On the other hand, the General Assembly of Ohio may enact any law which is not prohibited by the Constitution.

Angell v. Toledo, 153 Ohio St. 179, 181, 91 N.E.2d 250 (1950).

{¶ 90} Thus, the question the majority should be asking is not whether the fee is authorized by the Ohio Constitution but whether it is prohibited. And the answer to that question is simple: it is not. The majority is unable to point to any provision of the Ohio Constitution that forbids the implementation of such a fee. Indeed, all it can say is that the fee is not authorized by either Article XVIII, Section 13 or Article XIII, Section 6. But, of course, that's an answer to the wrong question.

{¶ 91} Though its rationale is difficult to follow, the majority appears to justify its result, at least in part, through the Ohio Constitution's Home Rule Amendment (Article XVIII, Section 3). The argument seems to be that (1) the authority of a municipality "to exercise all powers of local self-government" under the Home Rule Amendment includes the power to levy and collect municipal taxes and (2) the Ohio Constitution allows the state legislature to limit this municipal taxing authority, (3) but the fee does not act as a limit on the municipality's taxing authority, so (4) the state cannot impose a fee for the service it provides.

{¶ 92} But this argument largely misses the point. Again, the question is not whether the fee is an act of limitation but whether it is explicitly prohibited by the Ohio Constitution. *Angell*, 153 Ohio St. at 181, 91 N.E.2d 250. Nothing in the Home Rule Amendment prohibits the state from charging a fee for a service that it lawfully provides to a municipality. Quite simply, when the state imposes a fee for a service that is provided by the state, it is not exercising a power of local self-

government. Rather, it is recovering its own administrative costs for a service that (as the majority acknowledges) the Ohio Constitution authorizes it to perform.

{¶ 93} Indeed, as the majority concedes, there is nothing novel about the scheme at issue here. R.C. Chapter 5745 regulates municipal income taxation of electric light and telephone companies. Under that statute, these companies pay their municipal net-profits taxes to the tax commissioner and the tax commissioner charges a 1.5 percent administrative fee to defray the costs of administering the program. R.C. 5745.03(A). The scheme has been in place for 20 years, yet until today, no one has even suggested that it violates the Constitution.

{¶ 94} If further illustration of the flimsiness of the majority's reasoning is necessary, think about this. Under the majority's holding today, the legislature could completely prohibit a municipality from levying a net-profits tax, replace the municipal tax with an identical state tax, and keep every dime collected for the state coffers. But if the state instead determines to return 99.5 percent of the funds collected to the municipal government, according to the majority it has violated the Ohio Constitution. Does that make any sense?

{¶ 95} Indeed, by the majority's reasoning, the state could accomplish the exact same thing the majority finds unconstitutional if only the legislature would characterize the scheme a little differently. Instead of keeping .5 percent of the tax to cover administrative costs, the state could simply impose *an additional* .5 percent state net-profits tax on the taxpayer, and using its power of limitation, *lower* the corresponding municipal tax by .5 percent. The result would be the exact same for the state, for the municipality, and for the taxpayer. Yet under the majority's logic, this triumph of semantics over substance would be just fine.

{¶ 96} But the legislature need not go to these lengths. Nothing in the Ohio Constitution precludes the state from assessing the administrative fee at issue in this case. As a consequence, I respectfully dissent from the majority's judgment

finding the administrative fee unconstitutional. I concur in its judgment upholding the remainder of the scheme.

FRENCH, J., concurs in the foregoing opinion.

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Ohio Municipal Attorneys Association and Garry E. Hunter; and Paul W. Flowers Co., L.P.A., Paul W. Flowers, and Louis E. Grube, urging reversal for amicus curiae Ohio Municipal League.

Taft, Stettinius & Hollister, L.L.P., and J. Donald Mottley, urging reversal for amicus curiae Greater Dayton Mayors and Managers Association.

Dale R. Emch, Toledo Law Director, and John E. Bibish IV, urging reversal for amicus curiae city of Toledo.

Graydon, Head & Ritchey, L.L.P., Nicholas J. Ziepfel, and Roula Allouch, urging reversal for amicus curiae city of Trenton.

Mitchell H. Banchefsky, urging reversal for amici curiae local-government-law professors, International Municipal Lawyers Association, and International City/County Management Association.

Zaino, Hall & Farrin, L.L.C., Richard C. Farrin, and Thomas M. Zaino, urging affirmance for amici curiae Ohio Society of Certified Public Accountants, Ohio Chamber of Commerce, National Federation of Independent Business in Ohio, Ohio Realtors, Manufacturing Policy Alliance, Associated General Contractors of Ohio, Ohio Contractors Association, National Electrical Contractors Association, Mechanical Contractors Association of Ohio, Ohio Business Roundtable, Ohio Manufacturers' Association, Ohio Farm Bureau Federation, Ohio Council of Retail Merchants, ABC of Ohio, and Ohio Cable Telecommunications Association.

SALT BUZZ$_{HF}$

Ohio Supreme Court Upholds Constitutionality of Centralized Filing and Administration for Municipal Net Profits Tax but Strikes Imposition of .5% Fee Retained by State

November 5, 2020

Richard C. Farrin, JD
Member

Today the Ohio Supreme Court issued its opinion in *Athens v. McClain*, Slip Opinion 2020-Ohio-1546, which considered a constitutional challenge by Ohio municipalities to laws enacted by the General Assembly authorizing, among other things, centralized filing and administration by the Ohio Department of Taxation of net profits taxes imposed by Ohio municipalities and the .5% fee retained by the state from the collection of those taxes for administering the taxes. The challenges were based on the Home Rule Amendment of the Ohio Constitution, which confers upon Ohio's municipalities various powers of self-government, including the power of taxation. However, other provisions of the Ohio Constitution grant the General Assembly the power to limit or restrict the municipalities' power of taxation. The issue was whether the centralized filing and administration provisions in one of the bills enacted by the General Assembly (H.B. 49, enacted in 2017) were within its power to limit or restrict the municipalities' power of taxation.

The Ohio Supreme Court held that the provisions were within the General Assembly's power to limit or restrict the municipalities' power of taxation. The Court relied on language in R.C. 718.013 and 718.04, enacted by H.B. 5 in 2014, which provided that a municipality was prohibited from imposing an income tax unless it did so in accordance with the provisions of R.C. Chapter 718 and incorporated those provisions in its tax code. The Court held that these provisions were a limitation on municipalities' power of taxation. The Court held that the General Assembly's power to limit the municipalities' power of taxation allowed it to require that municipal income taxes be imposed in strict compliance with laws enacted by the General Assembly. Among the provisions in R.C. Chapter 718 are the provisions authorizing

businesses subject to municipal net profits taxes to elect centralized filing and administration with the Department of Taxation. Therefore, the Court concluded, the General Assembly was within its constitutional authority when it enacted the centralized filing and administration provisions in H.B. 49.

However, the Court held that the provision authorizing the state to retain .5% of the amount collected to cover the state's costs of administering the tax did not constitute a limitation or restriction of the municipalities' power of taxation and was therefore unconstitutional under the Home Rule Amendment. The Court found that the fee provision was severable from the remainder of the provisions in H.B. 49 and therefore held that the striking down of the fee provision did not invalidate the rest of the enactment.

If you would like to discuss the *Athens* case or any municipal net profits tax, please contact Richard Farrin or any other ZHF professional.

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