

In the
Supreme Court of Ohio

INTERNATIONAL PAPER COMPANY,

Appellee,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellant.

:
: Case No. 2014-1614
:
:
: Appeal from Ohio Board of Tax Appeals
:
: BTA Case No. 2010-2230
:
:
:

APPENDIX TO APPELLANT TAX COMMISSIONER'S REPLY BRIEF

RICHARD FARRIN (0022850)
THOMAS ZAINO (0041945)
Zaino, Hall & Farrin LLC
41 S. High Street, Suite 3600
Columbus, Ohio 43215
Telephone: (614) 326-1120
Facsimile: (614) 458-0028
rfarrin@zhftaxlaw.com

*Counsel for Appellee
International Paper Company*

MICHAEL DEWINE (0009181)
Attorney General of Ohio
BARTON A. HUBBARD (0023141)
(Counsel of Record)
DAVID D. EBERSOLE (008796)
Assistant Attorneys General
ALEXANDER R. KEEN
Certified Legal Intern
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
Telephone: (614) 466-2941
Facsimile: (866) 294-0472
barton.hubbard@ohioattorneygeneral.gov

*Counsel for Appellant
Joseph W. Testa, Tax Commissioner of Ohio*

TABLE OF CONTENTS

	Page
Sub. S.B. 200, 149 Ohio Laws (Part I), 1943, 1962, eff. Sept. 6, 2002 (selected pages).....	1
Former R.C. 5751.53, as originally enacted pursuant to Am. Sub. H.B. 66, 125th G.A., eff. Jun. 30, 2005.....	13
LSC Bill Analysis for Am. Sub. H.B. 66, 125th G.A., eff. Jun. 30, 2005 (selected pages).....	19
Current R.C. 5751.53, as amended pursuant to Am. Sub. H.B. 530, 126th G.A., eff. Mar. 30, 2006.....	25
LSC Bill Analysis for Am. Sub. H.B. 530, 126th G.A., eff. Mar. 30, 2006 (selected pages).....	31

Respectfully submitted,

Michael DeWine
Ohio Attorney General



BARTON A. HUBBARD (0023141)*

DAVID D. EBERSOLE (0087896)

*Counsel of Record

Assistant Attorneys General

ALEXANDER R. KEEN

Certified Legal Intern

30 East Broad Street, 25th Floor

Columbus, Ohio 43215

Telephone: (614) 644-8909

Facsimile: (877) 636-8331

*Counsel of Appellant Joseph W. Testa,
Tax Commissioner of Ohio*

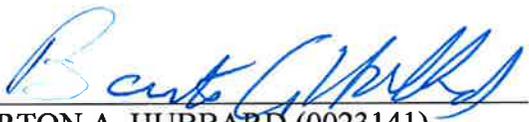
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appendix to Appellant Tax Commissioner's Reply

Brief was served upon the following by U.S. regular mail on this 9th day of March, 2015:

RICHARD FARRIN (0022850)
THOMAS ZAINO (0041945)
Zaino, Hall & Farrin LLC
41 S. High Street, Suite 3600
Columbus, Ohio 43215
rfarrin@zhftaxlaw.com

*Counsel for Appellee
International Paper Company*


BARTON A. HUBBARD (0023141)
Assistant Attorney General

HEINONLINE

Citation: 2001-2002 vol. 149 I pt1 1943 2001



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Sun Mar 8 15:39:11 2015

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

(124th General Assembly)
(Substitute Senate Bill Number 200)

AN ACT

To amend sections 323.152, 2935.01, 3317.026, 3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 5741.01, 5741.13, 5743.05, 5743.081, 5743.53, 5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 5749.07, and 5749.08; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5735.311 (5728.05); to enact new sections 5739.07 and 5741.10 and sections 5703.60 and 5703.70; and to repeal sections 5728.05, 5735.31, 5739.67, 5741.10, and 5747.181 of the Revised Code to amend the procedures for determining the amounts of, and hearing challenges to, various tax assessments and refunds, to alter the method of adjusting eligibility criteria for the homestead exemption, energy

subsidies, the credit for installation of emergency telephone systems, the personal exemption, and the deduction for medical savings accounts, to authorize the release by public officials of certain information relating to vendors, to increase the loss carryover period for corporations, to change record-keeping requirements for certain taxpayers, to conform state law to federal law with regard to taxation of mobile telecommunications service, to increase protection of tax department employees from assault, and to make other changes relating to the administration of the tax laws by the Department of Taxation; and to amend the versions of sections 5733.021 and 5733.12 of the Revised Code that are scheduled to take effect July 1, 2002, and the versions of sections 5727.26, 5728.08, and 5735.06 of the Revised Code that are scheduled to take effect January 1, 2003, to continue the provisions of this act on and after those dates.

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

SECTION 1. That sections 323.152, 2935.01, 3317.026, 3734.905, 3734.907, 3769.088, 3924.66, 4305.131, 4307.05, 4307.07, 4503.065, 5117.071, 5703.05, 5703.21, 5703.37, 5703.51, 5711.31, 5715.49, 5715.50, 5717.02, 5727.26, 5727.28, 5727.39, 5727.47, 5727.471, 5727.89, 5727.91, 5727.93, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.061, 5728.07, 5728.08, 5728.09, 5728.10, 5728.11, 5728.13, 5733.021, 5733.04, 5733.05, 5733.11, 5733.12, 5733.28, 5735.06, 5735.11, 5735.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5735.311, 5739.01, 5739.011, 5739.02, 5739.026, 5739.031, 5739.033, 5739.05, 5739.104, 5739.13, 5739.17, 5739.31, 5739.99, 5741.01, 5741.13, 5743.05,

5743.081, 5743.53, 5743.56, 5745.11, 5745.12, 5747.025, 5747.06, 5747.08, 5747.13, 5749.07, and 5749.08 be amended; that section 5735.311 (5728.05) be amended for the purpose of adopting a new section number as indicated in parentheses; and that new sections 5739.07 and 5741.10 and sections 5703.60 and 5703.70 of the Revised Code be enacted to read as follows:

Sec. 323.152. In addition to the reduction in taxes required under section 319.302 of the Revised Code, taxes shall be reduced as provided in divisions (A) and (B) of this section.

(A)(1) Division (A) of this section applies to any of the following:

- (a) A person who is permanently and totally disabled;
- (b) A person who is sixty-five years of age or older;
- (c) A person who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in taxes under this division in the year of death, provided the surviving spouse is at least fifty-nine but not sixty-five or more years of age on the date the deceased spouse dies.

(2) Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A) of this section applies shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code or for which the occupant obtains a certificate of reduction in accordance with section 323.159 of the Revised Code. The reduction shall equal the amount obtained by multiplying the tax rate for the tax year for which the certificate is issued by the reduction in taxable value shown in the following schedule:

Total Income	Reduce Taxable Value by the Lesser of:
\$11,900 or less	\$5,000 or seventy-five per cent
More than \$11,900 but not more than \$17,500	\$3,000 or sixty per cent
More than \$17,500 but not more than \$23,000	\$1,000 or twenty-five per cent
More than \$23,000	-0-

(3) Each calendar year ~~beginning in 1999~~, the tax commissioner shall adjust the foregoing schedule by completing the following steps

calculations in September of each year:

(a) Determine the percentage increase in the gross domestic product deflator determined by the bureau of economic analysis of the United States department of commerce from the first day of July January of the preceding calendar year to the last day of June December of the current preceding calendar year;

(b) Multiply that percentage increase by each of the total income amounts, and by each dollar amount by which taxable value is reduced, for the current tax year;

(c) Add the resulting product to each of the total income amounts, and to each of the dollar amounts by which taxable value is reduced, for the current tax year;

(d) Round the resulting sum to the nearest multiple of one hundred dollars.

The commissioner shall certify the amounts resulting from the adjustment to each county auditor not later than the first day of December each year. The certified amounts apply to the following tax year. The commissioner shall not make the adjustment in any calendar year in which the amounts resulting from the adjustment would be less than the total income amounts, or less than the dollar amounts by which taxable value is reduced, for the current tax year.

(B) Real property taxes on any homestead, and manufactured home taxes on any manufactured or mobile home on which a manufactured home tax is assessed pursuant to division (D)(2) of section 4503.06 of the Revised Code, shall be reduced for each year for which the owner obtains a certificate of reduction from the county auditor under section 323.154 of the Revised Code. The amount of the reduction shall equal one-fourth of the amount by which the taxes charged and payable on the homestead or the manufactured or mobile home are reduced for such year under section 319.302 of the Revised Code.

(C) The reductions granted by this section do not apply to special assessments or respread of assessments levied against the homestead, and if there is a transfer of ownership subsequent to the filing of an application for a reduction in taxes, such reductions are not forfeited for such year by virtue of such transfer.

(D) The reductions in taxable value referred to in this section shall be applied solely as a factor for the purpose of computing the reduction of taxes under this section and shall not affect the total value of property in any subdivision or taxing district as listed and assessed for taxation on the tax lists and duplicates, or any direct or

HEINONLINE

Citation: 2001-2002 vol. 149 I pt1 1962 2001



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Sun Mar 8 15:39:45 2015

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

which the amounts resulting from the adjustment would be less than the total income amounts for the preceding year.

(B) Each In September of each year, the tax commissioner also shall adjust the current total income amounts set forth in sections 5117.07 and 5117.09 of the Revised Code. For any year, the current total income amounts shall equal one-half of the respective total income amounts set forth in those sections and adjusted under division (A) of this section for that year.

(C) Each year, the tax commissioner shall provide both the adjusted total income amounts referred to in division (A) of this section and the current total income amounts referred to in division (B) of this section to the director of development.

(D) The director of development and each energy company and energy dealer shall use the adjusted total income amounts and the current total income amounts determined under divisions (A) and (B) of this section in performing their duties under sections 5117.01 to 5117.12 of the Revised Code.

Sec. 5703.05. All powers, duties, and functions of the department of taxation are vested in and shall be performed by the tax commissioner, which powers, duties, and functions shall include, but shall not be limited to, the following:

(A) Prescribing all blank forms which the department is authorized to prescribe, and to provide such forms and distribute the same as required by law and the rules of the department. The tax commissioner shall include a mail-in registration form prescribed in section 3503.14 of the Revised Code within the return and instructions for the tax levied in odd-numbered years under section 5747.02 of the Revised Code, beginning with the tax levied for 1995. The secretary of state shall bear all costs for the inclusion of the mail-in registration form. That form shall be addressed for return to the office of the secretary of state.

(B) Exercising the authority provided by law, including orders from bankruptcy courts, relative to remitting or refunding taxes or assessments, including penalties and interest thereon, illegally or erroneously assessed or collected, or for any other reason overpaid, and in addition, the commissioner may on written application of any person, firm, or corporation claiming to have overpaid to the treasurer of state at any time within five years prior to the making of such application any tax payable under any law which the department of taxation is required to administer which does not contain any provision for refund, or on the commissioner's own

motion investigate the facts and make in triplicate a written statement of the commissioner's findings, and, if the commissioner finds that there has been an overpayment, issue in triplicate a certificate of abatement payable to the taxpayer, the taxpayer's assigns, or legal representative which shows the amount of the overpayment and the kind of tax overpaid. One copy of such statement shall be entered on the journal of the commissioner, one shall be certified to the attorney general, and one certified copy shall be delivered to the taxpayer. All copies of the certificate of abatement shall be transmitted to the attorney general, and if the attorney general finds it to be correct the attorney general shall so certify on each copy, and deliver one copy to the taxpayer, one copy to the commissioner, and the third copy to the treasurer of state. Except as provided in sections 5725.08 and 5725.16 of the Revised Code the taxpayer's copy of any certificates of abatement may be tendered by the payee or transferee thereof to the treasurer of state as payment, to the extent of the amount thereof, of any tax payable to the treasurer of state.

(C) Exercising the authority provided by law relative to consenting to the compromise and settlement of tax claims;

(D) Exercising the authority provided by law relative to the use of alternative tax bases by taxpayers in the making of personal property tax returns;

(E) Exercising the authority provided by law relative to authorizing the prepayment of taxes on retail sales of tangible personal property or on the storage, use, or consumption of personal property, and waiving the collection of such taxes from the consumers;

(F) Exercising the authority provided by law to revoke licenses;

(G) Maintaining a continuous study of the practical operation of all taxation and revenue laws of the state, the manner in which and extent to which such laws provide revenues for the support of the state and its political subdivisions, the probable effect upon such revenue of possible changes in existing laws, and the possible enactment of measures providing for other forms of taxation. For this purpose the commissioner may establish and maintain a division of research and statistics, and may appoint necessary employees who shall be in the unclassified civil service; the results of such study shall be available to the members of the general assembly and the public.

(H) Making all tax assessments, valuations, findings,

determinations, computations, and orders the department of taxation is by law authorized and required to make and, pursuant to time limitations provided by law, on the commissioner's own motion, reviewing, redetermining, or correcting any tax assessments, valuations, findings, determinations, computations, or orders the commissioner has made, but the commissioner shall not review, redetermine, or correct any tax assessment, valuation, finding, determination, computation, or order which the commissioner has made as to which an appeal or application for rehearing, review, redetermination, or correction has been filed with the board of tax appeals, unless such appeal or application is withdrawn by the appellant or applicant or dismissed;

(I) Appointing not more than five deputy tax commissioners, who, under such regulations as the rules of the department of taxation prescribe, may act for the commissioner in the performance of such duties as the commissioner prescribes in the administration of the laws which the commissioner is authorized and required to administer, and who shall serve in the unclassified civil service at the pleasure of the commissioner, but if a person who holds a position in the classified service is appointed, it shall not affect the civil service status of such person. The commissioner may designate not more than two of the deputy commissioners to act as commissioner in case of the absence, disability, or recusal of the commissioner or vacancy in the office of commissioner. The commissioner may adopt rules relating to the order of precedence of such designated deputy commissioners and to their assumption and administration of the office of commissioner.

(J) Appointing and prescribing the duties of all other employees of the department of taxation necessary in the performance of the work of the department which the tax commissioner is by law authorized and required to perform, and creating such divisions or sections of employees as, in the commissioner's judgment, is proper;

(K) Organizing the work of the department, which the commissioner is by law authorized and required to perform, so that, in the commissioner's judgment, an efficient and economical administration of the laws will result;

(L) Maintaining a journal, which is open to public inspection, in which the tax commissioner shall keep a record of all actions taken by final determinations of the commissioner relating to assessments and the reasons therefor;

(M) Adopting and promulgating, in the manner provided by

section 5703.14 of the Revised Code, all rules of the department, including rules for the administration of sections 3517.16, 3517.17, and 5747.081 of the Revised Code;

(N) Destroying any or all returns or assessment certificates in the manner authorized by law;

(O) Adopting rules, in accordance with division (B) of section 325.31 of the Revised Code, governing the expenditure of moneys from the real estate assessment fund under that division.

Sec. 5703.21. (A) Except as provided in divisions (B) and (C) of this section, no agent of the department of taxation, except in the agent's report to the department or when called on to testify in any court or proceeding, shall divulge any information acquired by the agent as to the transactions, property, or business of any person while acting or claiming to act under orders of the department. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the department.

(B)(1) For purposes of an audit pursuant to section 117.15 of the Revised Code, or an audit of the department pursuant to Chapter 117. of the Revised Code, or an audit, pursuant to that chapter, the objective of which is to express an opinion on a financial report or statement prepared or issued pursuant to division (A)(7) or (9) of section 126.21 of the Revised Code, the officers and employees of the auditor of state charged with conducting the audit shall have access to and the right to examine any state tax returns and state tax return information in the possession of the department to the extent that the access and examination are necessary for purposes of the audit. Any information acquired as the result of that access and examination shall not be divulged for any purpose other than as required for the audit or unless the officers and employees are required to testify in a court or proceeding under compulsion of legal process. Whoever violates this provision shall thereafter be disqualified from acting as an officer or employee or in any other capacity under appointment or employment of the auditor of state.

(2) As provided by section 6103(d)(2) of the Internal Revenue Code, any federal tax returns or federal tax information that the department has acquired from the internal revenue service, through federal and state statutory authority, may be disclosed to the auditor of state solely for purposes of an audit of the department.

(C) Division (A) of this section does not prohibit any of the following:

FORMER R.C. 5751.53

**(as originally enacted pursuant to Am. Sub. H.B. 66,
of the 125th General Assembly, eff. June 30, 2005)**

(A) As used in this section:

- (1) "Net income" and "taxable year" have the same meanings as in section 5733.04 of the Revised Code.
- (2) "Franchise tax year" means "tax year" as defined in section 5733.04 of the Revised Code.
- (3) "Deductible temporary differences" and "taxable temporary differences" have the same meanings as those terms have for purposes of paragraph 13 of the statement of financial accounting standards, number 109.
- (4) "Qualifying taxpayer" means a taxpayer under this chapter that has a qualifying Ohio net operating loss carryforward equal to or greater than the qualifying amount.
- (5) "Qualifying Ohio net operating loss carryforward" means an Ohio net operating loss carryforward that the taxpayer could deduct in whole or in part for franchise tax year 2006 under section 5733.04 of the Revised Code but for the application of division (H) of this section. A qualifying Ohio net operating loss carryforward shall not exceed the amount of loss carryforward from franchise tax year 2005 as reported by the taxpayer either on a franchise tax report for franchise tax year 2005 pursuant to section 5733.02 of the Revised Code or on an amended franchise tax report prepared in good faith for such year and filed before July 1, 2006.
- (6) "Disallowed Ohio net operating loss carryforward" means the lesser of the amounts described in division (A)(6)(a) or (b) of this section, but the amounts described in divisions (A)(6)(a) and (b) of this section shall each be reduced by the qualifying amount.
 - (a) The qualifying taxpayer's qualifying Ohio net operating loss carryforward;
 - (b) The Ohio net operating loss carryforward amount that the qualifying taxpayer used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2004, adjusted for return to accrual, but this amount shall be reduced by the qualifying related valuation allowance amount. For the purposes of this section, the "qualifying related valuation allowance amount" is the amount of Ohio net operating loss reflected in the qualifying taxpayer's computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2004, with

respect to the deferred tax asset relating to its Ohio net operating loss carryforward amount.

(7) "Other net deferred tax items apportioned to this state" is the product of (a) the amount of net deferred tax items and (b) the fraction described in division (B)(2) of section 5733.05 for the qualifying taxpayer's franchise tax year 2005.

(8)

(a) Subject to divisions (A)(8)(b) to (d) of this section, the "amount of other net deferred tax items" is the difference between (i) the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of its taxable year ending in 2004, and (ii) the qualifying taxpayer's taxable temporary differences as shown on those books and records on that date. The amount of other net deferred tax items may be less than zero.

(b) For the purposes of computing the amount of the qualifying taxpayer's other net deferred tax items described in division (A)(8)(a) of this section, any credit carryforward allowed under Chapter 5733. of the Revised Code shall be excluded from the amount of deductible temporary differences to the extent such credit carryforward amount, net of any related valuation allowance amount, is otherwise included in the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of the qualifying taxpayer's taxable year ending in 2004.

(c) No portion of the disallowed Ohio net operating loss carryforward shall be included in the computation of the amount of the qualifying taxpayer's net deferred tax items described in division (A)(8)(a) of this section.

(d) In no event shall the amount of other net deferred tax items apportioned to this state exceed twenty-five per cent of the qualifying Ohio net operating loss carryforward.

(9) "Amortizable amount" means:

(a) If the qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than zero, eight per cent of the sum of the qualifying taxpayer's disallowed Ohio net operating loss carryforward and the qualifying taxpayer's other net deferred tax items apportioned to this state;

(b) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is less than the qualifying taxpayer's disallowed net operating loss, eight per cent of the difference between the qualifying

taxpayer's disallowed net operating loss carryforward and the absolute value of the qualifying taxpayer's other net deferred tax items apportioned to this state;

(c) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than the qualifying taxpayer's disallowed net operating loss, zero.

(10) "Books and records" means the qualifying taxpayer's books, records, and all other information, all of which the qualifying taxpayer maintains and uses to prepare and issue its financial statements in accordance with generally accepted accounting principles.

(11)

(a) Except as modified by division (A)(11)(b) of this section, "qualifying amount" means fifty million dollars per person.

(b) If for franchise tax year 2005 the person was a member of a combined franchise tax report, as provided by section 5733.052 of the Revised Code, the "qualifying amount" is, in the aggregate, fifty million dollars for all members of that combined franchise tax report, and for purposes of divisions (A)(6)(a) and (b) of this section, those members shall allocate to each member any portion of the fifty million dollar amount. The total amount allocated to the members who are qualifying taxpayers shall equal fifty million dollars.

(B) For each calendar period beginning prior to January 1, 2030, there is hereby allowed a nonrefundable tax credit against the tax levied each year by this chapter on each qualifying taxpayer, on each consolidated elected taxpayer having one or more qualifying taxpayers as a member, and on each combined taxpayer having one or more qualifying taxpayers as a member. The credit shall be claimed in the order specified in section 5751.98 of the Revised Code and is allowed only to reduce the first one-half of any tax remaining after allowance of the credits that precede it in section 5751.98 of the Revised Code. No credit under division (B) of this section shall be allowed against the second one-half of such remaining tax.

Except as otherwise limited by divisions (C) and (D) of this section, the maximum amount of the nonrefundable credit that may be used against the first one-half of the remaining tax for each calendar year is as follows:

(1) For calendar year 2010, ten per cent of the amortizable amount;

(2) For calendar year 2011, twenty per cent of the amortizable amount, less all amounts previously used;

(3) For calendar year 2012, thirty per cent of the amortizable amount, less all amounts previously used;

(4) For calendar year 2013, forty per cent of the amortizable amount, less all amounts previously used;

(5) For calendar year 2014, fifty per cent of the amortizable amount, less all amounts previously used;

(6) For calendar year 2015, sixty per cent of the amortizable amount, less all amounts previously used;

(7) For calendar year 2016, seventy per cent of the amortizable amount, less all amounts previously used;

(8) For calendar year 2017, eighty per cent of the amortizable amount, less all amounts previously used;

(9) For calendar year 2018, ninety per cent of the amortizable amount, less all amounts previously used;

(10) For each of calendar years 2019 through 2029, one hundred per cent of the amortizable amount, less all amounts used in all previous years.

In no event shall the cumulative credit used for calendar years 2010 through 2029 exceed one hundred per cent of the amortizable amount.

(C)

(1) Except as otherwise set forth in division (C)(2) of this section, a refundable credit is allowed in calendar year 2030 for any portion of the qualifying taxpayer's amortizable amount that is not used in accordance with division (B) of this section against the tax levied by this chapter on all taxpayers.

(2) Division (C)(1) of this section shall not apply and no refundable credit shall be available to any person if during any portion of the calendar year 2030 the person is not subject to the tax imposed by this chapter.

(D) Not later than June 30, 2006, each qualifying taxpayer, consolidated elected taxpayer, or combined taxpayer that will claim for any year the credit allowed in divisions (B) and (C) of this section shall file with the tax commissioner a report setting forth the amortizable amount available to such taxpayer and all other related information that the commissioner, by rule, requires. If the taxpayer does not timely file the report or fails to provide timely all information required by this division, the taxpayer is precluded from claiming any credit amounts described in divisions (B) and (C) of this section. Unless extended by mutual consent, the tax commissioner may, until June 30, 2010, audit the accuracy of the amortizable amount available to each taxpayer that will claim the credit, and adjust the amortizable amount or, if appropriate, issue any assessment necessary to correct any errors found upon audit.

(E) For the purpose of calculating the amortizable amount, if the tax commissioner ascertains that any portion of that amount is the result of a sham transaction as described in section 5703.56 of the Revised Code, the commissioner shall reduce the amortizable amount by two times the adjustment.

(F) If one entity transfers all or a portion of its assets and equity to another entity as part of an entity organization or reorganization or subsequent entity organization or reorganization for which no gain or loss is recognized in whole or in part for federal income tax purposes under the Internal Revenue Code, the credits allowed by this section shall be computed in a manner consistent with that used to compute the portion, if any, of federal net operating losses allowed to the respective entities under the Internal Revenue Code. The tax commissioner may prescribe forms or rules for making the computations required by this division.

(G)

(1) Except as provided in division (F) of this section, no person shall pledge, collateralize, hypothecate, assign, convey, sell, exchange, or otherwise dispose of any or all tax credits, or any portion of any or all tax credits allowed under this section.

(2) No credit allowed under this section is subject to execution, attachment, lien, levy, or other judicial proceeding.

(H)

(1)

(a) Except as set forth in division (H)(1)(b) of this section and notwithstanding division (I)(1) of section 5733.04 of the Revised Code to the contrary, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction or adjustment for any

Ohio net operating loss carried forward to any one or more franchise tax years after franchise tax year 2005.

(b) Division (H)(1)(a) of this section applies only to the portion of the Ohio net operating loss represented by the disallowed Ohio net operating loss carryforward.

(2) Notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction, exclusion, or adjustment with respect to deductible temporary differences reflected on the person's books and records on the last day of its taxable year ending in 2004.

(3)(a) Except as set forth in division (H)(3)(b) of this section and notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall exclude from Ohio net income all taxable temporary differences reflected on the person's books and records on the last day of its taxable year ending in 2004.

(b) In no event shall the exclusion provided by division (H)(3)(a) of this section for any franchise tax year exceed the amount of the taxable temporary differences otherwise included in Ohio net income for that year.

(4) Divisions (H)(2) and (3) of this section shall apply only to the extent such items were used in the calculations of the credit provided by this section.



Final Analysis

*Jennifer A. Parker,
Ralph D. Clark,
and other LSC staff*

Legislative Service Commission

Am. Sub. H.B. 66*
126th General Assembly
(As Passed by the General Assembly)

Reps. Calvert, Flowers, Martin, McGregor, Peterson, Schlichter, Webster, Aslanides, Blasdel, Coley, Collier, Combs, DeWine, Dolan, C. Evans, D. Evans, Hagan, Kearns, Kilbane, Law, T. Patton, Seaver, Setzer, Wagoner, White, Widowfield, Husted

Sens. Amstutz, Goodman, Clancy, Carey, Jacobson, Harris

Effective date: June 30, 2005; certain provisions effective September 29, 2005; certain provisions effective on other dates; certain items vetoed

This final analysis is arranged by state agency, beginning with the Adjutant General and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item or that otherwise deals with the subject matter of the item. The analysis includes a Local Government category and a Retirement Systems category. It concludes with a Miscellaneous category.

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation.

TABLE OF CONTENTS

ADJUTANT GENERAL

Reimbursement of federal life insurance premiums for active duty members of the Ohio National Guard.....	29
Death benefit for active duty members of the Ohio National Guard	29
Ohio Military Reserve	30
Background	30
New annual report	30
New study commission.....	30

** This final analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Final Fiscal Analysis for H.B. 66 for an analysis of such provisions.*

Investment earnings of Education Facilities Trust Fund	524
Background	524
Project plan submission to ODOT.....	525

SECRETARY OF STATE

Notary public name or address change and resignation	526
Commissions for special police officers.....	526
Prohibitions on duplicate candidacy	527
Nomination or election to a federal office and a state or county office	527
Disqualification from the ballot before the primary election	528
Disqualification from the ballot before the general election	528

**BOARD OF SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY**

Licensure of audiologists.....	530
Licensure requirements.....	530
Licensure for individuals previously licensed in another state.....	531
Removal of license renewal provision.....	531

DEPARTMENT OF TAXATION

<i>I. Commercial Activity Tax</i>	542
New business privilege tax	542
Persons subject to tax	543
Persons not subject to the tax.....	543
Computation of tax.....	545
Revenue limitation and future rate adjustments	545
"Taxable gross receipts"	547
Use of revenue	554
Tax credits	555
Registration and fee	556
Consolidation of related taxpayers.....	557
Combined taxpayers.....	559
Tax periods	559
General administration.....	560
Criminal penalties	562
Challenging legality of tax's application	563
<i>II. Corporation Franchise Tax</i>	563
Phase-out of corporation franchise tax	563
Credit for unused net operating loss deductions, other deferred tax assets	564
Some noncorporations treated as corporations	567
Recycling and Litter Prevention Fund	568
Purchase and installation of new manufacturing machinery and equipment	568
Tax credits not available for purchases made after June 30, 2005.....	568



under continuing law and their nonrefundable credits. If a credit carryforward is allowed for a nonrefundable credit that exceeds annual tax liability, the excess is computed before the 4/5 phase-out fraction is applied. If a corporation has refundable credits for the year, or is entitled to the credit for taxes paid on its behalf by a partnership of which it is a partner, the refundable or partnership credit is not included in the calculation.²⁵² Likewise, in 2007, corporations owe the greater of the minimum tax or 3/5 of the difference between the tax they otherwise would owe and the nonrefundable credits and credit carryforwards from a prior year. Refundable credits and the partnership credit are not included in that amount. The fractions decline in 2008 to 2/5 and in 2009 to 1/5, and any refundable credits and the partnership credit are treated in the same fashion in each of those years.

The act adjusts the computation of the withholding tax imposed on pass-through entities with certain corporate owners to reflect the phase-out of the corporation franchise tax. The withholding tax is computed on the basis of the total of the franchise tax liabilities of corporate owners not having a taxable presence in Ohio (other than their ownership of the entity). The computation of the withholding tax reflects the phase-out of the corporation franchise tax, but only for those corporate owners that qualify for the phase-out. If a corporate owner of the entity remains subject to the franchise tax, its share of the withholding tax computation remains as under continuing law, without applying the phase-out fractions.

Credit for unused net operating loss deductions, other deferred tax assets

(R.C. 5751.53 and 5751.98; Section 612.21)

The act permits corporations becoming subject to the commercial activity tax to claim a tax credit offsetting some of the financial statement effects of losing the ability to deduct net operating losses (NOLs) and some other deferred tax items in computing their corporation franchise tax, which is being phased out for most corporations. Under the law in operation before the tax is fully phased out, corporations may deduct NOLs in computing their net incomes and may carry

²⁵² *The partnership credit, known as the "qualifying pass-through entity tax credit," is a credit for taxes paid by a partnership or other pass-through entity on behalf of a corporation that is a partner or owner of a pass-through entity doing business in Ohio, but which itself does not have any taxable business presence in the state. A withholding tax is imposed on the partnership or entity to ensure that the corporation satisfies its franchise tax obligation. The corporation then is credited with the tax paid on its behalf by the entity against the corporation's individual franchise tax obligation.*

forward any excess NOL that is not applied to the current year's net income computation; NOLs may be carried forward for up to 20 years.²⁵³

Under accounting standards that govern accounting for income taxes, a taxpayer's ability to carry forward currently unused NOLs, credits, and other tax items that may reduce future tax liabilities create what are known as deductible temporary differences. The differences arise from differences in tax accounting versus financial accounting for events--such as an operating loss--that affect financial statements in a different time period from when they affect the tax accounts. To the extent these differences under the current tax laws are more likely than not to result in a future reduction in tax liability (e.g., a future deduction of a currently unused NOL), they represent a deferred tax asset on the current balance sheet.²⁵⁴ But if some event occurs that causes the asset to lose value before its value is fully realized--for example, because of a reduction in future tax rates or the disallowance of the deduction because of legislative changes--the loss of value must be recorded on current financial statements when the event occurs, which results in a current net accounting loss.

The act addresses the current financial effects of such losses by permitting some corporations to claim a credit against the commercial activity tax. In effect, the credit represents a new deferred tax asset to offset some of the financial loss resulting from the devaluation of the existing deferred tax asset. The credit is available only for corporations that have a qualifying NOL carryforward, after adjusting for other net temporary differences (see below), that exceeds \$50 million. (In effect, the credit offsets only losses from the disallowance of NOL carryforwards to the extent those losses exceed \$50 million.) If a corporation filed a combined franchise tax report with related corporations for tax year 2005, the \$50 million threshold is divisible among the corporations filing the combined report. The NOL carryforward amount after deducting the \$50 million amount is termed the "disallowed Ohio net operating loss carryforward."

NOL carryforwards qualify for the credit computation only if they are otherwise deductible in franchise tax year 2006 and to the extent they do not exceed the carryforward available from franchise tax year 2005.²⁵⁵ The amount of

²⁵³ However, the carryforward period is 15 years if the NOL is incurred before August 6, 1997.

²⁵⁴ Conversely, temporary differences likely to be realized as a future tax liability--known as taxable temporary differences--represent deferred tax liabilities.

²⁵⁵ As reflected in the 2005 franchise tax report or an amended 2005 report filed before July 1, 2006.

such NOL carryforwards for which the credit may be claimed is the lesser of the following amounts minus \$50 million: (1) the NOL carryforward amount (reflecting apportionment to Ohio) or (2) the NOL carryforward amount the corporation used to compute the corporation's deferred tax asset on its books on the last day of the corporation's taxable year that ended in 2004. This second amount is to be determined net of the valuation allowance account related to the NOL carryforward (which reflects the diminution in the value of the asset on the basis of the corporation's assessment of the likelihood of not realizing the asset).

Other tax items representing deductible temporary differences or taxable temporary differences must be included in the credit computation if they are shown on the corporation's books on the last day of the corporation's taxable year that ended in 2004.²⁵⁶ The act excludes any temporary differences that arise from unused credit carryforwards. The net amount of the deductible and taxable temporary differences (which may be a negative number) must be apportioned under the franchise tax three-factor apportionment formula. The net apportioned amount of these items may not exceed 25% of the NOL carryforward amount that qualifies for the act's credit computation.

The credit amount is computed on the basis of the net amount of the disallowed Ohio NOL carryforward and the other deferred tax assets or liabilities. (This net amount is termed the "amortizable amount.") If the net sum of the other deferred amounts is not less than zero, the amortizable amount equals 8% of the sum of the disallowed Ohio NOL carryforward and the other items. If the net sum of the other deferred items is less than zero, but when expressed as a positive number is less than the disallowed Ohio NOL carryforward, the amortizable amount equals 8% of the difference. If the net sum of the other items is less than zero but when expressed as a positive number exceeds the disallowed Ohio NOL carryforward, the amortizable amount equals zero and there is no credit.

The credit for the amortizable amount is available beginning in 2010, but it is not available all at once. Instead, it is gradually phased in over ten years, with the credit available for 10% of the amortizable amount available in 2010 and ten additional percent available each year until 2019, when the credit becomes available for 100% of the amortizable amount (less previously claimed credit amounts) through 2029. In any year through 2029, the credit may not exceed one-half of a corporation's commercial activity tax liability after deducting any other credits allowed against the commercial activity tax. If the total of the credits taken between 2010 and 2029 is less than the amortizable amount for which the credit

²⁵⁶ *All temporary differences must be computed net of any related valuation allowance account--i.e., net of any adjustments to their values to account for the likelihood the associated deferred tax asset or liability will not be realized.*

could be claimed, a refundable credit is allowed in 2030 for the remaining effects of the unclaimed credit, but the credit may be claimed in 2030 only if the person claiming the credit is a commercial activity tax taxpayer in that year.

If a corporation entitled to the credit is a member of a consolidated elected taxpayer group or combined taxpayer group (both of which file and pay the commercial activity tax as a single taxpayer), the group is entitled to the credit. If a nonrecognition transaction occurs with respect to a corporation entitled to the credit, the amortizable amount, and all amounts contributing to the computation of that amount, must be computed in a manner consistent with the federal computation of net operating losses under such circumstances.

The credit may not be transferred or used as collateral or otherwise assigned to another person. The credit is not subject to attachment, execution, levy, lien, or other judicial proceeding.

If the Tax Commissioner finds that a corporation claims the credit on the basis of an amount that results from a sham transaction, twice the amount in question is to be deducted from the amortizable amount.

All corporations intending to claim the credit must file a report with the Tax Commissioner by June 30, 2006, showing the amortizable amount on the basis of which the corporation (or its consolidated or combined group) intends to claim the credit, and any other information the Tax Commissioner requires. The credit is denied if a corporation fails to provide the report.

The Tax Commissioner may audit the accuracy of a taxpayer's amortizable amount until June 30, 2010 (or later if extended by mutual consent) and adjust the amount or, if appropriate, issue an assessment as necessary to correct any errors.

Some noncorporations treated as corporations

(R.C. 5733.01(E))

The act clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in prior law, the act makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.



CURRENT R.C. 5751.53

**(as amended pursuant to Am. Sub. H.B. 530
of the 126th General Assembly, eff. March 30th, 2006)**

(A) As used in this section:

- (1) "Net income" and "taxable year" have the same meanings as in section 5733.04 of the Revised Code.
- (2) "Franchise tax year" means "tax year" as defined in section 5733.04 of the Revised Code.
- (3) "Deductible temporary differences" and "taxable temporary differences" have the same meanings as those terms have for purposes of paragraph 13 of the statement of financial accounting standards, number 109.
- (4) "Qualifying taxpayer" means a taxpayer under this chapter that has a qualifying Ohio net operating loss carryforward equal to or greater than the qualifying amount.
- (5) "Qualifying Ohio net operating loss carryforward" means an Ohio net operating loss carryforward that the taxpayer could deduct in whole or in part for franchise tax year 2006 under section 5733.04 of the Revised Code but for the application of division (H) of this section. A qualifying Ohio net operating loss carryforward shall not exceed the amount of loss carryforward from franchise tax year 2005 as reported by the taxpayer either on a franchise tax report for franchise tax year 2005 pursuant to section 5733.02 of the Revised Code or on an amended franchise tax report prepared in good faith for such year and filed before July 1, 2006.
- (6) "Disallowed Ohio net operating loss carryforward" means the lesser of the amounts described in division (A)(6)(a) or (b) of this section, but the amounts described in divisions (A)(6)(a) and (b) of this section shall each be reduced by the qualifying amount.
 - (a) The qualifying taxpayer's qualifying Ohio net operating loss carryforward;
 - (b) The Ohio net operating loss carryforward amount that the qualifying taxpayer used to compute the related deferred tax asset reflected on its books and records on the last day of its taxable year ending in 2004, adjusted for return to accrual, but this amount shall be reduced by the qualifying related valuation allowance amount. For the purposes of this section, the "qualifying related valuation allowance amount" is the amount of Ohio net operating loss reflected in the qualifying taxpayer's computation of the valuation allowance account, as shown on its books and records on the last day of its taxable year ending in 2004, with

respect to the deferred tax asset relating to its Ohio net operating loss carryforward amount.

(7) "Other net deferred tax items apportioned to this state" is the product of (a) the amount of other net deferred tax items and (b) the fraction described in division (B)(2) of section 5733.05 for the qualifying taxpayer's franchise tax year 2005.

(8)

(a) Subject to divisions (A)(8)(b) to (d) of this section, the "amount of other net deferred tax items" is the difference between (i) the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of its taxable year ending in 2004, and (ii) the qualifying taxpayer's taxable temporary differences as shown on those books and records on that date. The amount of other net deferred tax items may be less than zero.

(b) For the purposes of computing the amount of the qualifying taxpayer's other net deferred tax items described in division (A)(8)(a) of this section, any credit carryforward allowed under Chapter 5733. of the Revised Code shall be excluded from the amount of deductible temporary differences to the extent such credit carryforward amount, net of any related valuation allowance amount, is otherwise included in the qualifying taxpayer's deductible temporary differences, net of related valuation allowance amounts, shown on the qualifying taxpayer's books and records on the last day of the qualifying taxpayer's taxable year ending in 2004.

(c) No portion of the disallowed Ohio net operating loss carryforward shall be included in the computation of the amount of the qualifying taxpayer's other net deferred tax items described in division (A)(8)(a) of this section.

(d) In no event shall the amount of other net deferred tax items apportioned to this state exceed twenty-five per cent of the qualifying Ohio net operating loss carryforward.

(9) "Amortizable amount" means:

(a) If the qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than zero, eight per cent of the sum of the qualifying taxpayer's disallowed Ohio net operating loss carryforward and the qualifying taxpayer's other net deferred tax items apportioned to this state;

(b) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is less than the qualifying taxpayer's disallowed net operating loss, eight per cent of the difference between the qualifying

taxpayer's disallowed net operating loss carryforward and the absolute value of the qualifying taxpayer's other net deferred tax items apportioned to this state;

(c) If the amount of the qualifying taxpayer's other net deferred tax items apportioned to this state is less than zero and if the absolute value of the amount of qualifying taxpayer's other net deferred tax items apportioned to this state is equal to or greater than the qualifying taxpayer's disallowed net operating loss, zero.

(10) "Books and records" means the qualifying taxpayer's books, records, and all other information, all of which the qualifying taxpayer maintains and uses to prepare and issue its financial statements in accordance with generally accepted accounting principles.

(11)

(a) Except as modified by division (A)(11)(b) of this section, "qualifying amount" means fifty million dollars per person.

(b) If for franchise tax year 2005 the person was a member of a combined franchise tax report, as provided by section 5733.052 of the Revised Code, the "qualifying amount" is, in the aggregate, fifty million dollars for all members of that combined franchise tax report, and for purposes of divisions (A)(6)(a) and (b) of this section, those members shall allocate to each member any portion of the fifty million dollar amount. The total amount allocated to the members who are qualifying taxpayers shall equal fifty million dollars.

(B) For each calendar period beginning prior to January 1, 2030, there is hereby allowed a nonrefundable tax credit against the tax levied each year by this chapter on each qualifying taxpayer, on each consolidated elected taxpayer having one or more qualifying taxpayers as a member, and on each combined taxpayer having one or more qualifying taxpayers as a member. The credit shall be claimed in the order specified in section 5751.98 of the Revised Code and is allowed only to reduce the first one-half of any tax remaining after allowance of the credits that precede it in section 5751.98 of the Revised Code. No credit under division (B) of this section shall be allowed against the second one-half of such remaining tax.

Except as otherwise limited by divisions (C) and (D) of this section, the maximum amount of the nonrefundable credit that may be used against the first one-half of the remaining tax for each calendar year is as follows:

(1) For calendar year 2010, ten per cent of the amortizable amount;

(2) For calendar year 2011, twenty per cent of the amortizable amount, less all amounts previously used;

(3) For calendar year 2012, thirty per cent of the amortizable amount, less all amounts previously used;

(4) For calendar year 2013, forty per cent of the amortizable amount, less all amounts previously used;

(5) For calendar year 2014, fifty per cent of the amortizable amount, less all amounts previously used;

(6) For calendar year 2015, sixty per cent of the amortizable amount, less all amounts previously used;

(7) For calendar year 2016, seventy per cent of the amortizable amount, less all amounts previously used;

(8) For calendar year 2017, eighty per cent of the amortizable amount, less all amounts previously used;

(9) For calendar year 2018, ninety per cent of the amortizable amount, less all amounts previously used;

(10) For each of calendar years 2019 through 2029, one hundred per cent of the amortizable amount, less all amounts used in all previous years.

In no event shall the cumulative credit used for calendar years 2010 through 2029 exceed one hundred per cent of the amortizable amount.

(C)

(1) Except as otherwise set forth in division (C)(2) of this section, a refundable credit is allowed in calendar year 2030 for any portion of the qualifying taxpayer's amortizable amount that is not used in accordance with division (B) of this section against the tax levied by this chapter on all taxpayers.

(2) Division (C)(1) of this section shall not apply and no refundable credit shall be available to any person if during any portion of the calendar year 2030 the person is not subject to the tax imposed by this chapter.

(D) Not later than June 30, 2006, each qualifying taxpayer, consolidated elected taxpayer, or combined taxpayer that will claim for any year the credit allowed in divisions (B) and (C) of this section shall file with the tax commissioner a report setting forth the amortizable amount available to such taxpayer and all other related information that the commissioner, by rule, requires. If the taxpayer does not timely file the report or fails to provide timely all information required by this division, the taxpayer is precluded from claiming any credit amounts described in divisions (B) and (C) of this section. Unless extended by mutual consent, the tax commissioner may, until June 30, 2010, audit the accuracy of the amortizable amount available to each taxpayer that will claim the credit, and adjust the amortizable amount or, if appropriate, issue any assessment or final determination, as applicable, necessary to correct any errors found upon audit.

(E) For the purpose of calculating the amortizable amount, if the tax commissioner ascertains that any portion of that amount is the result of a sham transaction as described in section 5703.56 of the Revised Code, the commissioner shall reduce the amortizable amount by two times the adjustment.

(F) If one entity transfers all or a portion of its assets and equity to another entity as part of an entity organization or reorganization or subsequent entity organization or reorganization for which no gain or loss is recognized in whole or in part for federal income tax purposes under the Internal Revenue Code, the credits allowed by this section shall be computed in a manner consistent with that used to compute the portion, if any, of federal net operating losses allowed to the respective entities under the Internal Revenue Code. The tax commissioner may prescribe forms or rules for making the computations required by this division.

(G)

(1) Except as provided in division (F) of this section, no person shall pledge, collateralize, hypothecate, assign, convey, sell, exchange, or otherwise dispose of any or all tax credits, or any portion of any or all tax credits allowed under this section.

(2) No credit allowed under this section is subject to execution, attachment, lien, levy, or other judicial proceeding.

(H)

(1)

(a) Except as set forth in division (H)(1)(b) of this section and notwithstanding division (I)(1) of section 5733.04 of the Revised Code to the contrary, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction or adjustment for any

Ohio net operating loss carried forward to any one or more franchise tax years after franchise tax year 2005.

(b) Division (H)(1)(a) of this section applies only to the portion of the Ohio net operating loss represented by the disallowed Ohio net operating loss carryforward.

(2) Notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall not claim, and shall not be entitled to claim, any deduction, exclusion, or adjustment with respect to deductible temporary differences reflected on the person's books and records on the last day of its taxable year ending in 2004.

(3)

(a) Except as set forth in division (H)(3)(b) of this section and notwithstanding division (I) of section 5733.04 of the Revised Code to the contrary, with respect to all franchise tax years after franchise tax year 2005, each person timely and fully complying with the reporting requirements set forth in division (D) of this section shall exclude from Ohio net income all taxable temporary differences reflected on the person's books and records on the last day of its taxable year ending in 2004.

(b) In no event shall the exclusion provided by division (H)(3)(a) of this section for any franchise tax year exceed the amount of the taxable temporary differences otherwise included in Ohio net income for that year.

(4) Divisions (H)(2) and (3) of this section shall apply only to the extent such items were used in the calculations of the credit provided by this section.



Final Analysis

*Ralph D. Clark,
Jennifer A. Parker, and
other LSC staff*

Legislative Service Commission

Am. Sub. H.B. 530*
126th General Assembly
(As Passed by the General Assembly)

Reps. Calvert, Coley, Allen, Aslanides, Collier, Combs, Dolan, Evans, C., Evans, D., Flowers, Hagan, Law, Martin, McGregor, R., Peterson, Schneider, Seitz, Setzer, Webster, White, Widowfield

Sens. Carey, Harris, Spada

Effective date: June 30, 2006; certain sections and provisions effective March 30, 2006; certain other sections and provisions effective on other dates; contains item vetoes

This analysis is arranged by state agency, beginning with the Adjutant General and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis includes a Local Government category, and concludes with a Miscellaneous category.

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

TABLE OF CONTENTS

ADJUTANT GENERAL	10
Income tax exemption for National Guard death benefits and life insurance premium reimbursements	11
Commemorative Ohio National Guard Service Medal	11
DEPARTMENT OF ADMINISTRATIVE SERVICES	12
Revisions to the Civil Service Law	14
Overview	14
Proficiency assessments	14

** This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Fiscal Note for Am. Sub. H.B. 530 for an analysis of such provisions.*

BOARD OF REGENTS.....	153
Investment authority of two-year colleges.....	153
Shawnee State University board membership.....	154
STATE SCHOOL FOR THE BLIND/SCHOOL FOR THE DEAF.....	154
Pupil money management.....	155
SCHOOL FACILITIES COMMISSION.....	155
Eligibility for Exceptional Needs School Facilities Assistance Program.....	156
Background.....	156
The act.....	156
SECRETARY OF STATE.....	156
Secretary of State's use of social security and employer identification numbers in UCC filings.....	156
DEPARTMENT OF TAXATION.....	157
Commercial activity tax base.....	163
Clarification of deductibility.....	164
Tax collections.....	164
Exclusion for reimbursed tax payments.....	164
Receipts from deliveries to a "qualified distribution center".....	165
Commercial activity taxpayer consolidations.....	168
Foreign entities.....	168
Initial election.....	168
Prior approval.....	169
Commercial activity tax "bright-line presence" test.....	169
Minimum CAT tax for late registrants.....	169
Commercial activity tax reporting periods.....	170
Commercial activity tax registration requirements.....	170
Commercial activity tax registration fee refunds.....	171
Credit for unused franchise tax deductions.....	171
Commercial activity taxes due within 45 days after winding-up business.....	172
Income tax exemption election for certain trusts and their business holdings.....	172
Apportioning trust investment income.....	173
Apportioning trust investment income from closely held businesses.....	173
School district property tax to offset funding formula charge-off increases.....	174
Property tax exemption for state-owned property leased to a private party.....	175
Eligibility for levy reimbursement for delayed-effect levies.....	176
Alternative reimbursement basis.....	176
Timing of property tax replacement payments.....	177



Commercial activity tax registration fee refunds

(Section 757.24)

A one-time registration fee is imposed when a person first becomes subject to the commercial activity tax. (R.C. 5751.04.) Generally, a person becomes subject to the tax when the person's annual taxable gross receipts exceed \$150,000. The fee is \$20, or \$15 if a person registers electronically. The fee is applied to the person's first tax payment. A refund of the fee is not authorized under any circumstances. (Section 557.09 of H.B. 66 of the 126 General Assembly.)

The act temporarily authorizes a refund of the registration fee if a person paid the fee before December 1, 2006, but later determines the person is not subject to the tax. The refund is available only if the person cancels its tax registration before May 10, 2006. The refund must be applied for in the same manner as a refund of the tax. The act specifies that such a person is not subject to the tax during the first six-month tax period (July 1 through December 31, 2005) or for calendar year 2006.

Credit for unused franchise tax deductions

(R.C. 5751.53(D))

Corporations subject to the commercial activity tax are permitted to claim a tax credit offsetting some of the immediate financial statement effects of losing the ability to deduct net operating losses (NOLs) and some other deferred tax items in computing their corporation franchise tax, which is being phased out for most corporations. Taxpayers intending to claim the credit must file a report with the Tax Commissioner by June 30, 2006, setting forth information regarding the NOLs and related information on the basis of which the credit will be claimed. The Tax Commissioner has four years to audit the information to determine its accuracy and to make any necessary adjustments. The Tax Commissioner also may issue an assessment for any error in the state's favor.

The act adds that, in the case of such an error, the Tax Commissioner may also issue a final determination, as well as an assessment, to address the error. A final determination is the final administrative determination of a tax liability, and is appealable to the Board of Tax Appeals or to a court.

The provision takes effect immediately.



