Major Tax Changes in Ohio – H.B. 33 Biennial Budget Bill Tax Update

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Signed by Governor Mike DeWine on July 3, 2023, Ohio's Fiscal Year (FY) 2024-2025 biennial operating budget bill ("H.B. 33" or the "bill"), by far the most substantial in recent history, boasts nearly $200 billion in appropriations over the next two years and sets the stage for revenue allocation and policy changes across various sectors. Notably, H.B. 33 introduces significant tax reforms, including a major overhaul of the personal income tax system and exemptions for certain businesses from the Commercial Activity Tax (CAT). This article highlights the major tax provisions and their implications for Ohio's taxpayers and businesses alike.

CAT

Increased Exclusion and Quarterly Filing[1]

The bill increases the CAT exclusion threshold gradually over the next two years. In 2024, businesses with taxable gross receipts of $3 million or less, and from 2025 onwards, those with receipts of $6 million or less, will be exempt from the CAT. The $6 million threshold will be adjusted for inflation annually after 2025. Additionally, the bill eliminates the minimum tax, making businesses only subject to the existing CAT rate of 0.26% on taxable gross receipts exceeding the exclusion amount. Lastly, the bill requires all taxpayers to file quarterly, removing the calendar year filing option primarily available to taxpayers with less than $1 million in taxable gross receipts.

Broadband Funding Exclusion[2]

The bill exempts any federal, state, or local funding received, or debt forgiven to provide or expand Internet broadband service in Ohio from being included in the gross receipts taxable under the CAT. This exclusion covers video service, voice over internet protocol service, and internet protocol-enabled services. The change is

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effective for CAT tax periods ending on or October 3, 2023.

Heating Companies[3]

H.B. 33 exempts heating companies from the state's public utilities excise tax as of May 1, 2023, and subjects them to the commercial activity tax (CAT) starting from July 1, 2023.[4] Additionally, the bill stipulates that if a heating company is currently including public utility excise tax amounts in its customer rates, the company must pass on the net tax reduction to its customers.

Income Tax

Pass-Through Entity Taxes[5]

H.B. 33 aligns Ohio's Pass-Through Entity (PTE) tax with the "status quo" and guidance issued by the IRS that treats entity-level taxes as a business expense deduction, not subject to the $10,000 state and local tax deduction cap. For the purposes of the resident income tax credit for taxes paid to other states, the bill allows taxpayers to take into account pass-through entity taxes paid to other states and modifies the calculation of a taxpayers' Ohio adjusted gross income (OAGI) to any income deducted from Federal Adjusted Gross Income (FAGI) based on Ohio or any other state's PTE tax. These changes apply to taxable years ending on or after January 1, 2023, but taxpayers may apply them to taxable years ending on or after January 1, 2022, by filing an amended or original return for that year.

Household Income Tax Reduction

The bill outlines a two-year plan to decrease personal income tax, simplifying the tax system by reducing the number of tax brackets from four to two and eliminating income tax for those earning $26,050 or less per year.[6] The revised personal income tax brackets are provided in the table below.

Earnings	2022 Tax Rate	2023 Tax Rate	2024 Tax Rat
$0 – $26,050	0%	0%	0%

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$26,050 – $92,150	2.765%	2.75%	2.75%
$92,150 – $115,300	3.688%	3.688%	3.5%
> $115,300	3.99%	3.75%	3.5%

Deduction for Contributions to Homeownership Savings Accounts[7]

H.B. 33 authorizes an income tax deduction for individuals who contribute to homeownership savings accounts. The deduction has two components:

- Contributions to the homeownership savings accounts: limited to $10,000 per year for joint filers and $5,000 per year for other filers, with a lifetime maximum of $25,000 per contributor.
- Interest earned on deposits and employer contributions: available exclusively to the account holder.

If funds from the homeownership savings account are withdrawn but not utilized for closing costs on the account holder's primary residence, the withdrawn amount is subject to income tax and added to taxable income. This tax deduction is effective from the taxable year 2024 onwards, and the Tax Commissioner has the authority to establish additional rules.

Municipal Income Taxes

Net Profits Appointment For Remote Employees[8]

H.B. 33 permits businesses with remote employees to utilize a modified apportionment formula for the net profits tax (not withholding tax). Instead of apportioning payroll, sales, or property to the remote work location of employees, businesses can allocate these amounts to a designated "reporting location." This reporting location can be any place owned or controlled by the employer or, in specific cases, by a customer of the employer.

Extension for Businesses[9]

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The bill provides an additional, automatic one-month filing extension for municipal income tax returns where a business entity has received a six-month federal extension, bringing the full duration of the extension to seven months beginning in taxable years ending on or after January 1, 2023.

Exemptions For Stock Options and Deferred Compensation[10]

The bill exempts stock options and nonqualified deferred compensation income from any municipality's income tax. The bill's changes apply to taxable years beginning on or after January 1, 2024.

Sales and Use Tax[11]

Sales Tax Holidays

H.B. 33 authorizes a sales tax holiday for items under $500, expected to occur for at least 14 days in August 2024, alongside the existing "back-to-school" tax holiday during the first Friday of August and the following weekend. This holiday may be extended. Moreover, the bill mandates the continuation of similar, potentially shorter, tax holidays in subsequent years if the surplus revenue in the General Revenue Fund (GRF) reaches a specific threshold. Notably, this tax exemption applies to most items under $500, but specific exclusions encompass motor vehicles, watercraft, alcohol, marijuana, tobacco, and nicotine vapor products, among others.

Beginning August 2025, Ohio will observe an annual sales tax holiday, contingent upon a surplus of at least $60 million in the GRF from the previous fiscal year. The same per-item limit of $500 and reimbursement mechanism for state and local governments will apply.

Tax Credits and Incentives

Low-income Housing Tax Credit (LIHTC)[12]

As initially discussed in our previous article, Ohio Tax Talk: Building On Federal Affordable Housing Credit, H.B. 33 introduces a

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nonrefundable tax credit for the development of low-income rental housing in conjunction with the federal LIHTC program. This credit can be claimed against insurance premiums, financial institution, or income taxes. The bill allows the Governor's Office of Housing Transformation (GOHT) to reserve state tax credits for federal LIHTC projects as needed for financial feasibility. The state credits are capped at $100 million per fiscal year, and any unused credits carry forward to the next year. The credit applies to projects placed in service from July 1, 2023, until June 30, 2027, after which GOHT cannot reserve credits. Projects in Ohio that receive federal LIHTC may also qualify for Ohio LIHTC if they are placed into service on or after July 1, 2023.

Historic Building Rehabilitation Credit[13]

H.B. 33 extends the prohibition on LIHTC property receiving a historic rehabilitation tax credit to other federally subsidized residential rental properties.: Section 202, Supportive Housing for the Elderly; Section 811, Supportive Housing for Persons with Disabilities; Section 8, Housing Choice Voucher Program; Section 515, Rural Rental Housing Loans; Section 538, Guaranteed Rural Rental Housing Program; or Section 521, USDA Rural Rental Assistance Program. The expanded prohibition applies to credit applications filed on or after the bill's 90-day effective date.

Single-Family Housing Development Credit[14]

H.B. 33 grants a nonrefundable tax credit for investments in affordable single-family home development and construction against insurance premiums, financial institutions, or income taxes. To be eligible for the credit, a local government or quasi-public development entity, along with a private "development team," must submit an application to the GOHT. The applicant can allocate credits to taxpayers who invest capital in the project and are eligible for the credit-eligible taxes. The GOHT can reserve credits for qualifying single-family housing development projects located in Ohio. However, it cannot reserve any credits after June 30, 2027.

Film And Theater Credits[15]

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The bill authorizes a new tax credit for motion picture or Broadway theatrical production companies that complete capital improvement projects in Ohio. The credit is generally 25% of the company's actual qualified expenditures or the estimated amount on the application, whichever is lower. Qualified expenditures include Ohio-sourced capital improvement expenses, direct purchases of goods or services for the project, and accounting/auditing expenses for compliance. However, expenses for which an existing motion picture and theater credit has been awarded are not eligible. The credit is capped at $5 million per project, $5 million per county, and $100 million per fiscal year overall. Any unused portion of the $100 million allotment in a fiscal year can be carried forward to the next year.

Job Creation and Retention Credit Recapture Adjustments[16]

H.B. 33 permits the Tax Credit Authority (TCA) to adjust the repayment amount for a non-compliant taxpayer who received a job creation or job retention tax credit. However, this adjustment can only happen once within 90 days after certification and this adjustment is not allowed if the taxpayer has already repaid the amount or if the assessment has been certified to the Attorney General for collection.

Deduction and Exclusion for East Palestine Derailment Payment[17]

The bill authorizes an income tax deduction and a more limited CAT exclusion for certain payments received by a taxpayer and related to the train derailment near East Palestine that occurred on February 3, 2023. The deduction and exclusion applies to taxable years or tax periods beginning on or after January 1, 2023. The bill authorizes a state income tax deduction for any such payments resulting from that derailment that would be deductible under federal law if the derailment was a declared disaster that triggered the federal deduction. The bill additionally authorizes the taxpayer to deduct any payments received from an eligible payer to compensate for business losses.

Property Tax

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Property Sales Tax Ratio[18]

H.B. 33 makes two revisions to the sales ratio studies conducted by the Department of Taxation. Firstly, the studies now include all sales from the past three years, each given equal weight. Secondly, if the number of similarly situated property sales in the last three years is less than 5% of all such properties in the county, the Tax Department may require actual appraisals by the county auditor for that class of property.

These changes apply from tax year 2023, and the Department of Tax must certify the updated values within 15 days after the bill's effective date. As a result, the bill also extends the time for affected counties to finalize their tax duplicate and for taxpayers to make both installments of 2023 property taxes.

Subsidized Rental Property[19]

The bill authorizes the state auditor to audit the construction and rehabilitation costs of any project that has received certain federal subsidies or tax credits to construct or renovate rental housing. The covered programs are those that county auditors are explicitly authorized, under the bill, to use one of three valuation methods in appraising: the income approach, cost approach, or comparable sales approach.

Residential Development Land Exemptions[20]

H.B. 33 provides a property tax exemption for unimproved land subdivided for residential development. The exemption is for any value exceeding the fair market value of the original property and lasts up to eight years or until residential construction starts or the land is sold. This exemption does not apply to land within a tax increment financing (TIF) project. Additionally, the bill allows owners of real property that qualified for a brownfield tax abatement in 2020 but didn't receive the abatement until 2022 to apply for the abatement retroactively for two years. It extends the circumstances in which a county, municipality, or township can extend the maximum term of a parcel TIF by up to 30 years. Lastly, the bill extends the sunset date of a property tax exemption for qualified

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energy projects from 2025 to 2029.

Removal of Nonperforming Parcels[21]

The bill authorizes a township or municipality to remove a parcel from an existing municipal or township TIF, either individually or as part of an incentive district, and add the parcel to a new incentive district TIF, if the parcel's owner is required to make service payments under the existing TIF but has not yet done so.

Impacted City TIF Service Payment Reallocation[22]

The bill permits the legislative authority of an impacted city, meeting specific urbanization or disaster criteria, to reallocate parcel TIF service payments under certain circumstances. The reallocation can be directed to other projects related to urban development, not necessarily benefiting the assessed parcel, but must occur before July 1, 2024, and ensure sufficient funding for the public improvements benefiting the parcel.

30-Year Parcel TIF Extension[23]

H.B. 33 introduces modifications to extending the term of a parcel TIF by an additional 30 years. Instead of requiring aggregate TIF service payments exceeding $1.5 million in the previous year, a subdivision can now determine that future payments will meet this threshold and adopt the extension based on that determination. However, extensions cannot be adopted if service payments exceeded $1.5 million in any year preceding the year before the extension, after 2023. Additionally, a subdivision can now extend the term of a TIF in the original resolution authorizing it, presuming that service payments will meet the $1.5 million threshold in the future. These changes apply to pending and completed TIF proceedings.

Extension of Certain Municipal TIFs[24]

The bill allows municipalities that created an incentive district TIF before 2006 to extend the TIF for up to 15 years, subject to specific

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conditions. To be eligible, the municipality must obtain approval from each school board district where the TIF is located and notify each county containing the TIF. If a school board fails to approve or deny the TIF within the allocated time, the municipality cannot create the TIF, unless the resolution provides for compensation to be paid to the school district or if the school district waives its approval right. If the TIF is extended, the percentage of improvements exempted cannot exceed the original authorized percentage. For instance, if 80% of the improvement value was exempted in the original TIF, the extended TIF cannot allow an exemption of more than 80%.

Qualified Energy Project Tax Exemptions[25]

H.B. 33 extends the sunset date for real and tangible personal property exemptions for certain renewable energy projects. Currently, exemptions for qualifying projects in their construction or installation phases are set to sunset after tax year 2025 if they start construction by December 31, 2024. The bill extends these sunset dates by four years and adjusts other related deadlines accordingly. Additionally, the bill extends the deadline for renewable energy projects to be placed in service from December 31, 2025, to December 31, 2029. As long as these projects continue to meet certification requirements, the property tax exemption can last indefinitely.

Lodging Taxes

Convention, Entertainment, And Sports Facilities[26]

The bill allows counties, municipalities, and townships to levy up to a 3% tax on hotel transactions for transient guests. Counties with a population between 800,000 and 1 million to may repurpose part of their existing lodging taxes and levy an additional 1% lodging to fund the acquisition, construction, renovation, expansion, maintenance, operation, or promotion by a convention facilities authority, convention and visitors' bureau, or port authority of a convention or entertainment facility or a sports facility intended to house a Major League Soccer team. H.B. 33 also authorizes Cincinnati to repurpose

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part of its existing general lodging tax and special convention center lodging tax for the same purposes.

Headquarters Hotel Exemption and Financing[27]

The bill allows counties with a population over 800,000 to grant partial or full lodging tax exemptions to one "headquarters hotel" linked to a convention center. In return, the eligible subdivision can impose payments in lieu of taxes (PILOTs) on the hotel operator, up to the amount of the exempted taxes. These PILOTs are paid either to the subdivision or directly to a convention facility authority, port authority, or their agent. Essentially, this arrangement redirects lodging tax revenue to fund specific facility projects, akin to a tax increment financing (TIF) arrangement for property taxes. To ensure financing for the PILOT-funded facilities, an eligible subdivision may enter into a binding agreement with the headquarters hotel's operator, including any subsequent operator, to make mandatory payments to the subdivision or port authority. Importantly, the bill safeguards against a diminution of lodging tax rates or revenue resulting from the designation of a headquarters hotel that has not previously provided lodging to guests.

Sports Gaming Tax Rate Increase[28]

Effective July 1, 2023, Ohio's sports gaming tax increased from 10% to 20%, applicable to the sports gaming receipts of both online and in-person sports gaming businesses, with the exception of those offering gaming through lottery terminals. Under the bill, the entire revenue generated from this tax increase must be allocated for the general support of K-12 education, eliminating the previous 50% allocation reserved for K-12 athletics.

Municipal Ridesharing Tax[29]

The bill requires the City of Cincinnati, as the largest municipality in a county with a population between 800,000 and 1 million, to levy a tax on ridesharing services provided by transportation network companies (TNCs) for passengers starting or ending their ride within the city, with the generated revenue used for administrative

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purposes and funding economic development initiatives.

In conclusion, H.B. 33 introduces significant changes and reforms across various aspects of Ohio's tax landscape. These provisions, alongside other tax adjustments in the bill, aim to shape Ohio's fiscal policies, promote economic growth, and enhance funding for crucial sectors such as education and infrastructure. For more information in regard to any of the budget's tax provisions, contact any attorney with Frost Brown Todd's Tax practice group.

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[1] R.C. 5751.01(E)(1), (N), (O), and (R), 5751.02(A), 5751.03, 5751.04, 5751.05, 5751.051,

5751.06, 5751.08, and 5751.091; Section 803.340

[2] R.C. 5751.01(F)(2)(rr); Section 803.190

[3] R.C. 5727.30 and 5751.01(E); Sections 757.80 and 803.330

[4] A "heating company" is defined as a company engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating purposes. R.C. 5727.01(D)(8).

[5] R.C. 5747.01(A)(36), (41), and (S), 5747.05, 5747.11, and 5747.13; Section 803.310

[6] R.C. 5747.02

[7] R.C. 5747.01(A)(42) and (43) and 5747.85; Section 803.220

[8] R.C. 718.02, 718.021, 718.82, and 718.821; R.C. 718.021 (718.17); Section 803.240

[9] R.C. 718.05(G)(2) and 718.85(D)(1); Section 803.100

[10] R.C. 718.01(R), 718.02(G), and 718.82(F); Section 803.10

[11] R.C. 131.44, 5739.01, 5739.02, and 5739.41; Section 510.10

[12] R.C. 175.16, 5725.36, 5726.58, 5729.19, and 5747.83, with conforming changes in R.C. 175.12,

5725.98, 5726.98, 5729.98, and 5747.98

[13] R.C. 149.311; Section 803.270

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[14] R.C. 175.17, 5725.37, 5726.59, 5729.20, and 5747.84, with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98

[15] R.C. 122.85

[16] R.C. 122.17 and 122.171

[17] R.C. 5747.01(A)(39) and 5751.01(F)(2)(ss); Section 803.160

[18] R.C. 117.01 and 703.21

[19] R.C. 5713.03; Section 803.280

[20] R.C. 5709.56

[21] R.C. 5709.40 and 5709.73

[22] Section 757.70

[23] R.C. 5709.51

[24] R.C. 5709.40(L)

[25] R.C. 5727.75

[26] R.C. 5739.08 and 5739.09(X)

[27] R.C. 5739.093

[28] R.C. 5753.021; Sections 803.40 and 812.20

[29] R.C. 4925.09 and 4925.11

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