Ohio | Department of Taxation

INTRODUCTION

Chairman Oelslager, Vice-Chair Plummer, and members of the House Finance Committee: my name is Jeff McClain, Tax Commissioner for the Ohio Department of Taxation.

Thank you for the opportunity to testify today on the tax related aspects of Governor Mike DeWine's Fiscal Year (FY) 2022-2023 budget.

I am mindful of the guidance issued to all those who'd be coming before the General Assembly to testify on the budget so I will be succinct with my testimony.

I know you are all aware of the environment – economic, societal, and political – into which this budget is being introduced. From a tax perspective, there is no question that the coronavirus pandemic and changing reaction to it will continue to impact the performance of our various taxes and the revenues they generate to support the operations of Ohio state and local government.

We've all heard the disclaimer associated with some financial investment firms, that past performance is no guarantee of future returns.

No doubt prudent to keep that in mind, but there is value to be gained from looking back as you prepare to move Ohio forward.

In that context, I'd like to share with you the performance of some of Ohio's principal taxes over the previous few months. There are trends that provide support for hope that our economy will continue recovering.

I'd like to credit Director Murnieks' staff at OBM, as well as our analysts at the Department of Taxation for these perspectives on the performance of our primary taxes over the last six months.

Collectively, all of our main taxes have outperformed estimates in the first half of Fiscal Year 2021. The only exception is the public utility excise tax.

Sales Tax: looking at the sales tax, it's clear that people are buying taxable items – meaning tangible goods -- but not so much taxable services. Comparing the two is like looking at mirror opposites. Purchases of taxable goods … furniture, clothing, sporting goods, general merchandise … increased from 19-to-54% depending on the retail category. On the other, opposite, hand, travel, accommodations, food services, and recreation have seen business drop off 18-to-55%. When put together, and compared to estimates, non-auto sales tax revenues have come in 5.2% higher than anticipated over the previous six months ending December 31.

Sales tax on motor vehicles is also coming in above estimates for the first half of this Fiscal Year 2021. In the last three months of FY 21 ending December 31, sales tax on motor vehicles were 4.6% higher that same period, previous year.

Individual Income Tax: Ohio's second largest tax in terms of revenue also surpassed estimates but by a much more modest measure. Even though employer withholding rates were reduced by 4% in 2020, withholding collections for the first half of FY 21, were up by 0.3%.

Commercial Activity Tax (CAT): the CAT has had a split performance in this FY 21. The first three months showed a decline in revenue compared to the previous year, but this most recent three months ending in December, revenue exceed the previous year by 4.7%. That's reflective of an economy that was recovering from the largest and fastest decline in the national economy in modern history.

Cigarette and Other Tobacco Products Tax: this is something of a good news, bad news story. Good news: revenues are up; bad news: people are smoking more. In calendar year 2020 revenues were 9.8% higher than estimates.

Bottom Line: Fiscal Year-to-date revenues, ending December 31, are 3.7% above estimates, with total GRF taxes of approximately $12.9 billion.

TAX EXPENDITURE REPORT (TER)

I'd like to move on now to a brief description of the Tax Expenditure Report – or TER -- a publication that is part of the Governor's Executive Budget. The TER is produced by the Department of Taxation as a statutorily-designated responsibility of the Tax Commissioner.

The Tax Expenditure Report is just that: a report on the 138 tax expenditures that have accumulated over the years and estimates of their respective costs. The Department estimates reduced potential tax receipts by $9.2 billion in Fiscal Year 2022 from these expenditures. That's up from an estimated $8.7 billion five years prior in Fiscal Year 2018.

DEPARTMENT ACCOMPLISHMENTS

I'd like to take a moment to mention some of the Department's accomplishments in 2020. Apart from collecting taxes and overseeing the state tax system, we've been busy.

Some of our more notable initiatives:

- Developed a system that enables employers to submit W-2s electronically through the Ohio Business Gateway.

- Another upgrade, we rolled out a system that allows taxpayers and tax practitioners to respond to notices from the tax department electronically. This provides real-time confirmation of receipt.
- We modernized our web site and integrated it into the state's growing network of connected and coordinated network of agency web sites.
- We streamlined our legal processes and significantly cut down on the time it takes to move legal cases through the system. Additionally, the Department now accepts appeals electronically through its Online Notice Response System and publishes all Final Determinations on its website.
- And internally, we implemented a 'single sign-on' system for our employees to access the various technology platforms we use. This reduces our infrastructure costs and increases our efficiency.

PROPOSED TAX LAW ITEMS

Chairman Oelslager, the Department has no major policy items included in the "As Introduced" version of the budget. You will find two dozen of what I would characterize as technical or clarifying items that we believe will improve the understanding of and functionality of those tax laws.

I have included a listing of these changes as an addendum to this testimony for you to examine as this committee proceeds through its deliberations on the budget.

You'll see that they touch on various taxes including the commercial activity tax, or CAT, the financial institutions tax, or the FIT, the individual income tax, real property tax and some of the excise taxes and fees.

They also recommend some modifications to tax processes, primarily our revenue accounting function which, among other responsibilities, calculates and executes the receipt and distribution of tax revenues.

With that, Mr. Chairman and members of the House Finance Committee, I'd like to thank you for your time and would be happy to answer any questions you may have.

Ohio Department of Taxation – Summary of Provisions

FY2022-2023 Operating Budget

- Department of Taxation's funding line items.
- Outlines how the Department distributes collected revenues.
- Clarifies for the commercial activity tax that the annual minimum tax applicable to a taxpayer's first one million dollars in taxable gross receipts is based upon gross receipts reported in the previous calendar year.
- Codifies the tests used to determine common ownership and define membership in combined taxpayer groups and consolidated taxpayer groups for the commercial activity tax.
- Allows a real property tax exemption for permanent housing for the developmentally disabled when the owner receives funding from the state and/or is licensed by the Ohio Department of Developmental Disabilities or is a "provider controlled residential setting" as that term is defined by the Ohio Department of Developmental Disabilities.
- Allows certificate holders to prove that exclusive property not identified on an application filed prior to July 1, 2021, was consumed, used, and necessary for the operation of an exempt facility.
- Changes R.C. 5703.21 to permit the Department to share certain information with the State Racing Commission.
- Adds the resort area gross receipts excise tax (including tourism development districts) to the taxes required to be reviewed annually by the Tax Commissioner prior to liquor permit renewals and before applications for transfers of ownership.
- Removes the "NAICS code" requirement as it relates to the BID.
- Changes R.C. 5747.01(A)(5) to clarify that all railroad retirement that is subject to federal taxation, but is exempt from state taxation by federal law, is deductible in computing Ohio adjusted gross income.
- Updates R.C. 5747.05(B)(3) to change timeframe to file an amended return to report changes to a taxpayer's Ohio resident credit from 60 days to 90 days. This makes the time frame consistent with other amended return deadlines.
- Codifies the deduction for reciprocity agreements as part of the definition of Ohio adjusted gross income.
- Changes R.C. 5747.08(H) to list the various forms of withholding and clarifies that whoever is required to report the income on their Ohio return is who is entitled to a credit

for any withholding on the income.

- Decreases the fee paid to the Department of Taxation from fees collected by the clerks of court related to certificates of title from 25 cents per title to 15 cents per title.

- Amends R.C. 128.55 so that each county's share of the wireless 9-1-1 government assistance fund is equal to the total required distribution based upon more recent collection amounts and is distributed monthly instead of once annually.

- Increases the amount of time within which the Tax Commissioner must approve or deny a petition for a transfer of funds authorized by R.C. 5705.15 from ten days to thirty days.

- Amends statutes in Chapter 5741. dealing with remote sellers for use tax purposes. The Supreme Court's decision in *South Dakota v. Wayfair*, update of the state statutes, and inaction of U.S. Congress has made these provisions superfluous.

- Makes certain temporary provisions permanent:
    - A credit of two cents per gallon from the tax which is paid on wine, vermouth, and sparkling and carbonated wine and champagne to the Ohio grape industries fund.
    - A levy of one dollar per tire on the sale of tires by distributors.

- Eliminates the filing obligations for estates subject to the levy of the estate tax and simplifies the collection and distribution process. The proposal also streamlines the settlement process.

- Clarifies that the Tax Commissioner may issue refunds for an applicant multiple times based on information provided to the Tax Commissioner during an appeal process.

- Technical corrections:
    - Commercial activity tax Qualified Distribution Center
    - Financial institutions tax
    - Personal income tax
    - Changes term "targeted jobs credit" to "work opportunity tax credit," which is the name of the credit in the Internal Revenue Code