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Major Tax Reform Legislation in Ohio Brings Significant Changes

The legislation substantially modernizes the state's tax laws and provides significant tax relief; two major business taxes—corporation franchise and personal property—are phased out, and a new "commercial activity tax" is phased in.

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The Ohio biennial state budget bill (H.B. 66, 6/30/05; Sess. Law No. 28) that took effect 7/1/05 brings with it sweeping changes for nearly every Ohio individual and business. According to Ohio Tax Commissioner William W. Wilkins, the reform substantially modernizes the state's laws and provides significant tax relief with cuts to the state income and sales taxes. The legislation also phases out two major business taxes—corporation franchise and personal property—and phases in the new "commercial activity tax" on businesses. These significant changes ultimately will eliminate, prospectively, the issues related to the decision issued in September 2004 by the federal Court of Appeals for the Sixth Circuit in *Cuno v. DaimlerChrysler, Inc.*¹

In *Cuno*, the court found Ohio's incentive tax credit for new manufacturing machinery and equipment unconstitutional in violation of the Commerce Clause of the U.S. Constitution because Ohio offers the credits only to companies that invest within the state but not if a company invests outside of Ohio's borders. The decision was the result of a suit filed by some Toledo taxpayers who objected to an incentive package offered to DaimlerChrysler in 1998 to encourage a \$1.2 billion expansion of the auto maker's Toledo facility. Ohio helped to secure the project through various incentives, including the machinery and equipment tax credit. Various events have ensued since the decision was issued (recent developments are discussed in the text below).

Summary of Significant Changes

The new "commercial activity tax" (CAT) is an annual business privilege tax measured by gross receipts. Businesses with annual gross receipts of up to \$150,000 are not subject to the CAT. For receipts exceeding \$150,000 up to \$1 million, a \$150 minimum tax applies. Receipts exceeding \$1 million will be taxed at 0.26% when the tax is fully phased in. (For the CAT's initial tax period, the six months from 7/1/05 to 12/31/05, the rate is only 0.06%.) The CAT basically replaces the corporation franchise tax, which is being phased out ratably over five years (i.e., 20% annually), beginning in tax year 2006.

The tangible personal property tax will be phased out for most business inventory (for both manufacturers and merchants), manufacturing machinery and equipment, and furniture and fixtures over four years, at about 20% annually beginning in tax year 2006. Most new manufacturing machinery and equipment that would have been first taxable in tax year 2006 will not be subject to property tax at all. ²

The individual income tax rate for each tax bracket will be reduced by 4.2% for tax year 2005 (e.g., the lowest 2004 bracket, 0.743%, goes to 0.712% for 2005), and an additional 4.21% (from the 2004 rates) each year through 2009, for a total reduction of 21%. The tax on trust income has been made permanent. ³

The state sales tax rate will be cut from 6% to 5.5%. The vendor discount of 0.9% remains, for timely filed and paid sales tax returns.

The cigarette excise tax will increase by \$0.70 to a total of \$1.25 per pack of 20 cigarettes. Cigarette wholesalers and retailers must pay an additional \$0.70 per pack on cigarettes that were previously taxed but still in inventory at the end of business on 6/30/05.

The 10% real property rollback will be eliminated on most commercial and industrial real property, effectively increasing business realty taxes. The rollback remains, however, for residential and agricultural real property.

The Ohio estate tax law now reflects the elimination of the federal state death tax credit and, as a result, Ohio's "sponge" or pick-up estate tax is constructively repealed effective after 6/30/05. The Ohio basic estate tax remains in effect.

The Commercial Activity Tax

As noted above, most companies doing business in Ohio will now be subject to the "commercial activity tax," a broad-based, low-rate (0.26% when fully phased in after five years) business privilege tax measured by gross receipts. The CAT is codified at Ohio Rev. Code Ann. §5751.01 *et seq.*

Taxpayers. The CAT generally applies to all types of businesses (for example: retailers; service providers, such as lawyers, accountants, and doctors; manufacturers; etc.), and regardless of the form of the business, e.g., sole proprietorships, partnerships, limited liability companies (LLCs), and all types of corporations. The tax also applies whether the business is based in Ohio or is located outside the state, provided the taxpayer has sufficient business contacts, or nexus, with the state.

Any business with "taxable gross receipts" of more than \$150,000 in a calendar year is required to register with the Ohio Department of Taxation. Such business is deemed a "taxpayer" subject to the CAT. Certain businesses are excluded, however, such as certain public utilities, financial institutions, dealers in intangibles, financial or bank holding companies, and insurance companies.

Taxable gross receipts. "Gross receipts," which can be subject to the CAT, are broadly defined to include most types of business receipts from the sale or lease of property or the performance of a service. Some examples of receipts that are not subject to the CAT include: interest (other than from installment sales), dividends, capital gains, payments of principal, wages and other employee compensation, gifts, etc.

"Taxable gross receipts" are gross receipts situated to Ohio. In general, receipts from the sale of tangible personal property are situated to Ohio if the property is received in Ohio by the purchaser. Receipts from the sale of services generally are situated to Ohio in proportion to the purchaser's benefit in Ohio compared with the purchaser's benefit everywhere. The physical location where the purchaser ultimately uses or receives the benefit of the service is paramount in making this determination. Thus, receipts from sales of goods to out-of-state purchasers and sales of services performed out-of-state are not subject to the CAT.

Tax rates and filing dates. The CAT first applies to taxable gross receipts received after June 2005. Taxpayers required to use accrual accounting for federal income tax purposes must use the same reporting method for the CAT. For all taxpayers, the return for the first tax period, 7/1/05 to 12/31/05, is due 2/10/06. The minimum tax for that initial period is \$75, applicable to the first \$500,000 in taxable gross receipts. Because, as noted above, the tax is being phased in over five years, receipts in excess of that amount for that first measurement period are taxed at 0.06%.

Beginning January 2006, taxpayers with taxable gross receipts in excess of \$1 million per calendar year must file returns and pay tax quarterly. All other taxpayers file and pay annually. The return is due 40 days after the end of each tax period. For calendar year 2006, all taxpayers have until 5/10/06 to pay the \$150 minimum annual privilege tax on the first \$1 million in taxable gross receipts. Taxpayers subject to quarterly tax reporting will also have to pay the first quarter tax at that time.

Registering for the CAT. Registration is required for all taxpayers (whether annual or quarterly) with more than \$150,000 in taxable gross receipts. The deadline for registration is 11/15/05. A business that first becomes subject to the CAT after that date (i.e., has more than \$150,000 in taxable gross receipts in a calendar year) must register within 30 days. All registrations are subject to a one-time fee: single taxpayers pay \$15 if registering electronically and \$20 if registering via paper; consolidated and combined taxpayers (discussed below) pay \$20 for each person in the group, subject to a maximum fee of \$200. The fee is payable at the same time the registration is due, but a person that first becomes subject to the tax after 2005 can pay the registration fee with the first tax period return the person is required to file.

Electronic registration is available online via the state's electronic filing services website, "Ohio Business Gateway," at obg.ohio.gov, or through the Department of Taxation's website at tax.ohio.gov. Believing the Internet to be more efficient, the Department urges taxpayers to file electronically. Taxpayers still wanting to file using paper can obtain the form through the Department's website or by calling 1-800-282-1782. All registration fees will be applied as a credit against the first tax payment due.

Consolidated elected taxpayers; combined taxpayers. A "consolidated elected taxpayer" is a group of two or more taxpayers that elect to file as a single taxpayer. The group must include all persons or entities (including otherwise excluded businesses, discussed above) that have at least either 50% or 80% common ownership or control, based on value, and must also include the common owners. The group can elect to have foreign (i.e., non-U.S.⁴) corporations meeting the common ownership test either all included or all excluded from the group.

If 50% of the value of a business's ownership interests is owned or controlled by each of two consolidated elected taxpayer groups formed under the 50% test, that business is deemed a member of both groups. Accordingly, each such group must include in its taxable gross receipts 50% of that business's taxable gross receipts. Otherwise, all of that business's taxable gross receipts are included by the consolidated elected taxpayer group of which the business is a member.

A major benefit of the consolidated taxpayer election is that receipts received between members of the group are not subject to the CAT. A possible disadvantage, however, is that the group must include all commonly owned entities, even those lacking the requisite tax nexus with Ohio. The election is binding for two years.

Absent a consolidated election, all persons or entities (other than excluded businesses, discussed above) with more than 50% of the value of their ownership interests under common ownership or control are deemed a "combined taxpayer," and must file and pay tax as a single taxpayer. The combined group may not exclude receipts between members of the group, but the group need only include members that have tax nexus with Ohio.

Tangible Personal Property Tax Reimbursement

H.B. 66 phases out the tax on tangible personal property for general businesses, telephone and telecommunications companies, and railroads. The tax on general business and railroad property will be eliminated by 2009, and on telephone and telecommunications property by 2011. Under

the phase-out, the assessment rate on the property will be reduced each year. At the same time, the legislation provides for replacement of the lost revenue. For the first five years, school districts and local governments will be reimbursed fully for lost revenue, with the reimbursements phased out over the following seven years.

The new legislation creates a "commercial activities tax receipts fund," consisting of money arising from the imposition of the CAT. For each fiscal year, the money in that fund will be credited, in various percentages specified by statute, to the general revenue fund and to the "school district tangible property tax replacement fund" and the "local government tangible property tax replacement fund" (both also created by H.B. 66).

Definitions.

(1) "Qualifying levies" are levies that were in effect for the collection of tangible personal property taxes for tax year 2004 or applicable to tax year 2005 or approved by voters prior to September 2005 and first levied in tax year 2006.

(2) A "fixed-rate levy" is any tax on property other than a "fixed-sum levy." E.g., current expense levy, permanent improvement levy, charter levy, and unvoted (inside) general fund millage.

(3) A "fixed-sum levy" is a property tax levied at a particular rate needed to raise a specified amount of revenue or a voted debt levy, and includes school district emergency levies.

(4) The "half-mill threshold" adjustment is intended to protect local taxpayers from an excess shift of the tax burden due to valuation losses because of the changes made by H.B. 66. Under existing levy law, a drop in valuation causes an increase in the tax rate for a fixed-sum levy, so that the levy will produce the required revenue. The half-mill threshold limits the increase in the total tax rate for the sum of all qualifying fixed-sum levies for a taxing authority to 0.5 mill (0.0005). Any potential increase in tax rates above the first 0.5 mill will qualify for the reimbursements described below.

(5) "Base-year amount" is the property tax revenue lost when the tax has been fully phased out. It equals the taxable valuation lost multiplied by the qualifying levies prescribed by H.B. 66, using tax year 2004 as the base year for the calculation. (Tax year 2004 property values determined to be final as of 8/31/05 will be the property values used in calculating the taxable valuation lost.)

The "hold-harmless period": 2006-2010. As noted above, the tax on tangible personal property is to be phased out. (See Exhibit 3, below, for annual listing rates for tangible property per H.B. 66.) During the "hold harmless period," all local taxing authorities will be fully reimbursed relative to prior law for revenue lost due to the taxable value reductions prescribed by H.B. 66. (The treatment of telephone company property, discussed below, is somewhat different.)

The local taxing authorities will be reimbursed for the base-year amount, except that for inventory property, reimbursements will be made only for assessment percentage reductions beyond those already in place before passage of H.B. 66. Thus, reimbursements for inventory property revenue projections will be based on listing percentages of 23% for 2006, 21% for 2007, 19% for 2008, and 17% for 2009.

Likewise, because prior law reduced the assessment percentage for telephone and telecommunications property to 25% by 2007—the first year that the reductions in H.B. 66 apply to these taxpayers—schools and local governments will be reimbursed for the revenue projected by using only the 25% listing percentage for telephone company property (as discussed below).

All qualifying *fixed-rate levies* will be reimbursed to reflect the losses in tax revenue during the phase-out of the tangible property tax. Exhibits 4 and 5 show (for, respectively, local governments and school districts) the percentages of the base-year losses that will be received through a combination of local taxes and state reimbursements. During this period, the reimbursements will be received by the jurisdiction even if the qualifying levies expire, are reduced, or are not levied by the taxing authority. As currently drafted, the reimbursements for inventories are not in sync with the reduction in the assessment rates. The reimbursements assume the inventory assessment rates would be reduced in one-quarter increments. These rates phase out more slowly, however; thus the reimbursements are in excess of the property tax losses. A corrective bill may add language to bring the payments in line with the assessment rate phase-out.

All qualifying *fixed-sum levies for debt purposes* will be reimbursed at 100% of the base-year amount beginning in 2006, subject to the half-mill threshold adjustment for all the taxing authority's fixed-sum levies, as long as those levies or a portion thereof continue to be levied by the taxing authority for that year.

All qualifying *school district emergency levies* will be reimbursed at 100% of the base-year amount beginning in 2006, subject to the half-mill threshold adjustment for all the school district's fixed-sum levies, even if the emergency levy expires, is reduced, or is not levied by the school district for any of these years.

Telephone and telecommunication property is included in the calculation of the base-year amounts for both types of fixed-sum levies, even though the H.B. 66 phase-out of telephone company property does not begin until 2007.

The "phase-out period": 2011-2017. Reimbursements for qualifying *fixed-rate levies* will be phased out during the years 2011-2017. If during or prior to this period, qualifying levies expire, are reduced, or are not levied by the taxing authority for any of these tax years, they are reimbursed only to the extent they are still being levied (renewals count as still being levied). During this period, taxing authorities will receive a percentage of the base-year amount through the reimbursement payment. The reimbursement ratios are shown in Exhibit 6.

All qualifying *fixed-sum levies for debt purposes* will be reimbursed at the initially calculated level (full reimbursement less the half-mill threshold adjustment for all fixed-sum levies of the taxing authority) during the phase-out period, as long as those levies or a portion thereof are levied by the taxing authority for that year. For levies that continue beyond the phase-out period, the payments also will continue until the debt is retired.

Qualifying *school district emergency levies* will continue to receive reimbursement payments at the initially calculated level (full reimbursement less the half-mill threshold adjustment for all fixed-sum levies of the school district) if the district continues to renew the levy. An emergency

levy will be considered a renewal if the district has an emergency levy for at least the same amount of revenue generated by the qualifying emergency levy.

Special treatment for inside debt millage. Unvoted (inside) debt levies will be fully reimbursed at the base-year amount for tax years 2006-2017 (there is no phase-out), as long as the inside millage continues to be levied for debt purposes. No reimbursement will be made in 2018 or thereafter.

Telephone company property. Prior to H.B. 66, Ohio law distinguished between telecommunications property (property of long distance and cellular companies) and telephone company property (property of local telephone companies)—both were treated as public utility property but were taxed at different assessment percentages. All long distance and cellular property and local telephone property first subject to taxation after 1994 was assessed at 25%. Local telephone company legacy property—that is, property first placed in service before 1995—was assessed at 88%. To equalize assessment percentages for all such property, in 2003 the Ohio legislature enacted a provision that provided for the phase-down of the assessment percentages on local telephone company legacy property.⁵ Accordingly, such property will be assessed at 67% in 2005 and 46% in 2006, and would have been assessed at 25% in 2007 if not for the changes made by H.B. 66.

H.B. 66 combines telecommunications and telephone company property into one classification—telephone company property—and, starting in tax year 2007, reclassifies it as general business property rather than public utility property. Thus, such property is included in the elimination of the general business property tax but, under H.B. 66, has a unique phase-out schedule. While other tangible personal property will be phased out over four years beginning in 2006, telephone company property will be phased out over five years beginning in 2007. (Exhibit 3 lists the old and new assessment rates for both types of property.) Furthermore, while reimbursements generally end after 2017, they continue into 2018 for telephone company property.

Also, as with real property taxes, public utility property taxes are paid in the year following the tax year (e.g., 2006 assessments are paid in 2007), but tangible personal property taxes are paid during the tax year (2006 assessments are paid in 2006). Thus, in 2007—the year of the transition from public utility to general business tangible property—local governments will receive payments of both the public utility property tax levied in 2006 and the general tangible property tax levied in 2007. As a result of the double tax payment in 2007 to school districts and local governments, the state reimbursements attributable to telephone company property assessment rate declines will not begin until tax year 2009 (see Exhibits 4 and 5).

Reimbursements for fixed-rate levies. H.B. 66 treats each the different type of tangible property somewhat differently for purposes of the property tax phase-out.

- (1) All new manufacturing and machinery property put into service after 2004 is excluded from taxation.
- (2) Because taxation of inventory property is being phased out under prior law without reimbursement, H.B. 66 provides reimbursement for only that portion of the lost revenue that is over and above what would be lost under the prior law.
- (3) The phase-out for telephone company property does not begin until tax year 2007.

Because of these differences, the reimbursement rates for each type of property varies slightly. For example, in tax year 2006 the assessment rate on furniture and fixtures (part of the "other property" classification) is reduced by one-fourth (from 25% to 18.75%). The state reimbursement for 25% of the base-year amount holds schools and local governments harmless, so that they receive 100% of the base-year amount by a combination of local levies and state reimbursement payments. (See Exhibit 4, which shows, by property classification, the percentage of the base-year revenue loss that local governments will receive through existing levies and state reimbursements for tax years 2006 through 2018.)

In tax year 2006, the assessment rate on existing manufacturing machinery and equipment is also reduced by one-fourth to 18.75%. New manufacturing machinery and equipment, however, is not listed for taxation at all. In an effort to hold schools and local governments harmless, the reimbursement rate for manufacturing machinery and equipment is set at 33.8% of the base-year amount, instead of 25%. The higher reimbursement rate is designed to offset the loss in local tax revenue because of the zero assessment rate on new manufacturing machinery and equipment, so that schools and local governments generally will receive 100% of the base-year amount through a combination of reimbursements and local property tax revenues. Again in tax years 2007 and 2008, in an attempt to account for new property that comes on the rolls with a zero assessment rate, the reimbursement rates for machinery and equipment continue to be higher than the percentage decline in the assessment rate.

In general, the values used to determine the reimbursements to school districts and local governments are (1) the tax year 2004 property values in the district as of 8/31/05; (2) the "qualifying levy" rates; (3) a percentage based on the difference between the new (H.B. 66) and old assessment rates; and (4) the reimbursement rate, which, for non-telephone company property, is 100% for 2006 through 2010 and a declining percentage thereafter.

For example, in tax year 2006 the assessment rate on general business tangible property is reduced from 25% to 18.75%. The difference (25% minus 18.75%, or 6.25%) is the amount reimbursed. The reimbursement rate applied to manufacturing machinery and equipment does not precisely fit this formula because new manufacturing machinery and equipment is not taxed at all beginning in tax year 2006. Therefore, the reimbursement rate, on an estimated statewide basis, is increased to compensate schools and local governments for the zero percent property tax in years 2006 through 2008.⁶

Tax Reform and the *Cuno* Case

According to one Ohio official, *Cuno v. DaimlerChrysler, Inc.* "was the impetus to get the tax reform done more quickly. In an effort to aggressively address the problems of the *Cuno* case, the state has taken a three-prong approach: (1) address the Supreme Court; (2) support federal legislation to clarify that tax incentives are allowable under the constitution; and (3) develop and implement comprehensive tax reform to eliminate the need for some of the tax incentives."⁷

Confronting the U.S. Supreme Court. In September 2004, after a three-judge panel of the federal Court of Appeals for the Sixth Circuit found Ohio's manufacturing machinery and equipment tax credit unconstitutional, Ohio requested a review of *Cuno* by the full 13-member court. In January 2005, the court denied that request. Ohio then filed a motion to stay the decision and, on 1/31/05, that request was granted. Thus, for now, the state may continue

offering the tax credits, pending a final decision by the U.S. Supreme Court. In that regard, on 6/17/05 Ohio and the taxpayer filed appeals asking the Supreme Court to overturn the Sixth Circuit's decision. On 9/27/05, the Court agreed to hear the case.

Various organizations have filed amicus curiae briefs in support of the taxpayer's petition, the Tax Foundation among them. Foundation staff attorney Chris Atkins, co-author of the brief, stated: "Handing out tax incentives to lure companies may be poor tax policy, but the *Cuno* ruling imperils all forms of state tax competition, not just tax incentives." Further, Atkins declared that the Commerce Clause "was designed to encourage competition, including tax competition, between the states. It was not designed to broadly suppress competition for jobs and investment, which is what *Cuno* threatens to do." ⁸

Possible federal legislation. On 5/18/05, Senators George Voinovich (R-Ohio) and Debbie Stabenow (D-Mich.) and Representatives Patrick Tiberi (R-Ohio) and Ben Chandler (D-Ky.) introduced S. 1066 and its companion bill, H.R. 2471, the "Economic Development Bill of 2005." The legislation is intended to protect critical tax incentives used by states to encourage job creation and economic development. The bill would override the Sixth Circuit's *Cuno* decision by authorizing states to grant tax incentives that otherwise would impermissibly interfere with interstate commerce. Commenting on the bill, Sen. Voinovich said: "States are laboratories of democracy, and an innovation they have developed in recent years to help create jobs and prosperity are programs that allow them to encourage new growth through tax incentives for training, job creation, and investment in new plants and equipment.... [This] bill guarantees that we can keep using these tools to help grow our economy and put people to work." ⁹

The Senate version of the bill, introduced in the Finance Committee, has widespread, bi-partisan support, with 15 co-sponsors including all of the Senators in the Sixth Circuit, as well as the governors of Ohio and Tennessee, the National Governors Association, the National Association of Counties, the U.S. Conference of Mayors, the National League of Cities, the National Association of Manufacturers, the Teamsters Union, and broad-based business coalitions. Committee hearings were planned for September.

On 5/24/05, Ohio Lt. Governor Bruce Johnson, testifying before a House Judiciary subcommittee, stated: "Simply put, Ohio's ability to secure economic prosperity for our citizens is being hampered.... To help secure the prosperity of Ohio's citizens, and the citizens of all states, legislation must be enacted that returns the power to regulate tax credits to the states." ¹⁰

U.S. Sixth Circuit covers Kentucky, Michigan, Ohio, and Tennessee, and therefore the potential exists for repercussions in at least all those states if *Cuno* is not overturned. If the above-noted federal legislation is enacted, however, the *Cuno* decision should not remain as an on-going issue.

Develop comprehensive tax reform. The third part of Ohio's response to *Cuno*—and the primary focus of this article—is to develop and implement comprehensive tax reform that would eliminate the need for some tax incentives. As discussed above, substantial tax changes have been made that are expected to improve the state's business climate. As a result, the potential adverse effect of *Cuno*'s voiding of the state's investment tax credit will be moot, since the franchise tax is being phased out ratably over five years.

Conclusion

Ohio has enacted sweeping changes to the state's tax laws for various reasons. Of particular note is the state's desire to reduce or eliminate the impact of the federal Sixth Circuit's decision in *Cuno*, which has the potential to create havoc with many economic development incentive packages in the states that comprise that Circuit.

As this is written, the U.S. Supreme Court is considering whether to hear the appeals in *Cuno*. In addition, pending federal legislation may be another factor in settling the current turmoil in the economic development and incentives arena. []

Exhibit 1. Summary of Major Ohio Tax Changes

Tax Category	Description	Time Frame
Personal Income Tax	Implements a 21% across-the-board tax cut (4.2% per year reduction). Reduces the top state tax rate from the current 7.5% to 5.925%. . Imposes a permanent state tax on trusts. . Removes from the tax rolls approximately 550,000 taxpayers with Ohio taxable incomes under \$10,000. . Applies to more than 300,000 small businesses. . Eliminates the state higher education tuition tax deduction, in favor of a direct grant-in-aid state higher education grant program. . Suspends tax bracket indexing until 1/1/10.	Begins 7/1/05, with full implementation by 7/1/09
Tangible Personal Property Tax	Eliminates the tangible personal property tax (25% per year phase-out). Beginning 7/1/05, all NEW investment in machinery and equipment is exempt from taxation. .	Begins 7/1/05, with full implementation by 7/1/08

State collected \$1.6 billion of TPPT in 2003.

.
When fully implemented Ohio companies will save \$530 million annually by not paying TPPT on machinery and equipment.

.
Without the M&E component of TPPT, companies will save \$18,000 for each \$1 million in equipment.

Corporate Franchise Tax

Eliminates the corporate franchise tax for most businesses (20% per year phase-out).

Begins 7/1/05, with full implementation by 7/1/09

Continues to subject banks, financial institutions, and other financial-related businesses to a corporate franchise tax.

.
Ohio businesses save \$131.7 million in FY 06.

.
Ohio businesses save \$766 million starting in 2010.

Commercial Activity Tax

Institutes a "commercial activity tax" (CAT) on the gross proceeds (or receipts) generated by sales destined for Ohio.

Begins 7/1/05, with full implementation by 7/1/09

Employs a low tax rate of 0.26% on all gross receipts in excess of \$1 million.

.
Exempts the first \$150,000 in gross receipts from taxation, while subjecting the first \$1 million in gross receipts to only a minimum tax of \$150.

.
All exports from Ohio, by Ohio-based companies, are exempt from the CAT tax.

.
Non-Ohio companies pay CAT on sales destined for Ohio.

Estate Tax

Aligns state law with federal law, with the elimination of the Ohio estate "pick-up" (or sponge) tax.

Effective immediately

Real Property Tax

Eliminates the 10% rollback on all property intended for use primarily in business. (State currently pays 10% of

Effective immediately

commercial and residential property tax due.) State continues to pay rollback on residential property.

Excise ("Sin") Tax	Raise the state excise tax on cigarettes by \$0.70 per pack of 20, from the current rate of \$0.55 to a new rate of \$1.25.	Effective immediately
Sales and Use Tax	Reduces the state sales and use tax rate by one-half percentage point, from the current rate of 6% to a new rate of 5.5%.	Effective immediately

Source: Ohio Department of Taxation

Exhibit 2. Tax Law Rate Changes Under H.B. 66*



Exhibit 3. Assessment Percentages on Tangible Property (2005 to 2011)

Assessment Rates Under H.B. 66 for Tax Years:

Property type	2005	2006	2007	2008	2009	2010	2011
Inventory	23%	18.75%	12.5%	6.25%	0%	0%	0%
Machinery, equipment, and all other business tangible	25%	18.75%	12.5%	6.25%	0%	0%	0%
Local telephone company property placed into use after 1995 and all long-distance and cellular property	25%	25%	20%	15%	10%	5%	0%
Telephone company legacy property	67%	46%	20%	15%	10%	5%	0%

Assessment Percentages as in Effect Prior to H.B. 66:

Property type	2005	2006	2007	2008	2009	2010	2011
Inventory	23%	23%	21%	19%	17%	15%	13%
Machinery, equipment, and all other business tangible	25%	25%	25%	25%	25%	25%	25%
Local telephone company property placed into use after 1995 and all long- distance and cellular property	25%	25%	25%	25%	25%	25%	25%
Telephone company legacy property	67%	46%	25%	25%	25%	25%	25%

Source: Ohio Department of Taxation

Exhibit 4. Percent of Base-Year Revenue to Local Governments Through Combination of Reimbursements and Remaining Property Taxes (by Tax Year and Class of Property, Fixed-Rate Levies)

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Inventory:	106.5	95.6	84.8	73.9	73.9	60.9	47.8	39.1	30.4	21.8	13.0	4.3	0
Mfg. M&E:	100	100	100	100	100	82.4	64.7	52.9	41.2	29.4	17.6	5.9	0
Tel. Co.:	100	180	60	100	100	100	87.5	75	62.5	50	37.5	25	12.5
Other:	100	100	100	100	100	82.4	64.7	52.9	41.2	29.4	17.6	5.9	0

Source: Ohio Department of Taxation

Note: In tax years 2006-2010 for telephone property, and 2006-2008 for other property, the percentages shown represent money to be received by jurisdictions through a combination of reimbursement payments and remaining local property taxes. In other years, the revenue to be received is solely from state reimbursements. The amount received for inventory in 2006 exceeds the loss due to assessment rate changes because of the mismatch between the decline in assessment rates and the reimbursement rates.

Exhibit 5. Percent of Base-Year Revenue to School Districts Through Combination of Reimbursements and Remaining Property Taxes (by Tax Year and Class of Property, Fixed-Rate Levies)

	2006	2007	2008	2009	2010	2011	2012
Inventory	106.5	104.9	96.1	85	73.9	73.9	*
Mfg. M&E	100	100	100	100	100	100	*
Tel. Co.	100	104	129	96.4	119.5	101.9	*
Other	100	100	100	100	100	100	*

Source: Ohio Department of Taxation

* Note: Beginning in 2012, the percentage of base-year losses that will still be received will depend on a district's charge-off.

The phase-out applies only to direct payments above what is reimbursed through the foundation program. A district that gets most of its reimbursement through increased foundation payments because of lower values will see relatively less impact from the phase-out than a district that gets most of its reimbursement in direct payments. In general, districts with high millage rates and/or districts receiving foundation payments through the guarantee portion of the foundation program will see a bigger impact from the phase-out of direct reimbursements.

Exhibit 6. Ratio of Base-Year Revenue Paid During the Phase-out Period

	2011	2012	2013	2014	2015	2016	2017	2018
Business Property	14:17	11:17	9:17	7:17	5:17	3:17	1:17	0
Tel. Co. Property	1:1	7:8	3:4	5:8	1:2	3:8	1:4	1:8

Source: Ohio Department of Taxation

Note: For school reimbursements, the phase-out applies only to direct payments of fixed-rate levies.

NOTES:

¹

386 F3d 738 (CA-6, 2004), *reh'g en banc den.* 1/18/05. The case was analyzed in Biggins, "Ohio: Investment Tax Credit Incentive Violates Commerce Clause, Says Sixth Circuit," 14 J. Multistate Tax'n 36 (Nov/Dec 2004). Also see Evans, "Ohio: Update on *Cuno*, Governor's Budget

for Tax Reform," 15 J. Multistate Tax'n 42 (June 2005).

[2](#)

In calendar year 2003, of the total collected tangible personal property tax of \$1.63 billion, approximately 26.3% was from furniture and fixtures, 22.2% was from merchant inventory, 18% was from manufacturing inventory, and 33.5% was from machinery and equipment.

[3](#)

In calendar year 2003, personal income tax filings that reflected income from small businesses included approximately 130,000 S corporations, 90,000 partnerships and LLCs, and 430,000 sole proprietorships (130,000 with receipts over \$50,000 and 300,000 with receipts under \$50,000).

[4](#)

See Ohio Tax Information Rel. No. CAT 2005-1, 8/1/05.

[5](#)

H.B. 95, 6/26/03 (125th Gen'l Assembly).

[6](#)

Questions regarding the phase-out of the tangible personal property tax and the local government reimbursement provisions may be sent to the Ohio Department of Taxation's Division of Tax Analysis by e-mail, to tpp@tax.state.oh.us.

[7](#)

Bill Teets, Public Relations Manager for the Ohio Department of Development, a cabinet-level agency headed by the state's lieutenant governor that oversees a variety of programs intended to promote economic development in the state. For more information, see the Department's website at www.odod.state.oh.us.

[8](#)

See "Tax Foundation Files Supreme Court Brief in Defense of State Tax Competition" (News Release, 7/15/05), available online via the Foundation's website at www.taxfoundation.org.

[9](#)

See "Voinovich, Tiberi, Stabenow, and Chandler Propose Bill to Protect Key Economic Development Tools," 5/19/05, available online via Rep. Tiberi's website, www.house.gov/tiberi (select "Newsroom" and "Press Releases").

[10](#)

See "Bruce Johnson—Testimony Before the U.S. House Judiciary Subcommittee on the Constitution," 5/24/05, available on the Ohio Department of Development's website at www.odod.state.oh.us (select "Press Releases").

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