

## SUMMARY OF LEGISLATION

### **A** **mended Substitute House Bill 46, 126<sup>th</sup> General Assembly (effective August 17, 2006); Revised Code Sections: 9.833 and 305.172.**

The act allows political subdivisions to offer and make contributions to health savings accounts. It also expressly allows them to use public monies to pay for or fund federally qualified high deductible health plans that are linked to health savings accounts or to make contributions to health savings accounts.

### **Substitute H.B. 294, 126<sup>th</sup> General Assembly (effective September 28, 2006); Revised Code Sections: 323.65-.78; 5323.01-.04; 5323.9, 5715.19, 5721.01, 5721.03, 5721.06, 5739.03, 5739.033, 5739.24, 5741.02.**

The act provides for an expedited foreclosure procedure for unoccupied property that has delinquent taxes, and reduces the timeframe for designating delinquent vacant lands subject to judicial foreclosure. The act also makes changes to Ohio's laws that conform to the Streamlined Sales and Use Tax Agreement. Specifically, the act makes the switch to destination-based sourcing under the sales tax law for vendors with total delivery sales between \$5.0 million and \$30 million (scheduled to take place on May 1<sup>st</sup>, 2007), contingent upon the Tax Commissioner's determination, on or before February 1, 2007, that certified service provider (CSP) services are available for all delivery sales. (**Note:** The Tax Commissioner determined on February 1, 2007 that such services were not available, and the switch to destination-based sourcing is now scheduled to be made no later than January 1, 2008.) Finally, the act establishes an appeal procedure for challenging determinations of eligibility for the 10 percent "rollback" exemption from real property taxes.

### **Sub. H.B. 390, 126<sup>th</sup> General Assembly (effective September 28, 2006); Revised Code Sections: 109.082, 131.02, 131.022, 2305.26, 2329.07, 5703.06, 5703.58, 5733.18 (repealed), 5735.03, 5749.02.**

The act establishes a statute of limitations within which the Attorney General must begin judicial proceedings to collect most unpaid state tax debts. The time limitation is the greater of seven years after an assessment has been issued, four years after an assessment has become final, or the expiration of the time period of a legal stay in collections. It also generally establishes a ten-year statute of limitations on formally assessing an unpaid tax as a result of a person not filing a tax return, except in cases of fraud or situations where the tax is collected on the state's behalf but not remitted to the state. In addition, the act requires the Attorney General to report on tax collection efforts every two years with the initial report due April 30, 2007. Substitute House Bill 390 establishes a 12-year time limit on enforcing judgment liens in the state's favor and on enforcing statutory liens on real or personal property. Additionally, it eliminates express provisions for statutory liens securing payment of certain taxes. Any lien for these unpaid taxes will attach when a judgment is entered for the amount due under the provisions of general law. The act also specifies that the current offers in compromise procedure can be used to provide relief for "innocent spouses."

### **Am. Sub. H.B. 530, 126<sup>th</sup> General Assembly (various effective dates). Revised Code Sections: Various. Debts Owed to the State: Revised Code Section 131.02.**

The act outlines the time frames by which debts must be certified to the Attorney General for collection. It also allows the Attorney General to sell overdue claims, subject to the approval of the affected state agency and the Controlling Board, through a competitive process.

### **School District Debt Limits: Revised Code Sections 133.01, 133.06, 3313.372, 3318.052.**

The act makes several changes to school district debt limits. First, the act makes a change to the calculation of net indebtedness by changing the definition of tax valuation. For calculating the net indebtedness of all political subdivisions, "tax valuation" is defined as the aggregate of the valuations of property in the jurisdiction that is subject to taxation according to its value. Because H.B. 66, the biennial budget/tax reform bill, phased out the taxes and the tax valuations of numerous types of business property over four years, H.B. 530 specifies that "tax valuation" for a school district does not include the valuation of those types of business property: tangible personal property used in business, telephone or telegraph property, inter-exchange telecommunications company property, or personal property used by a railroad company in its operations.

Second, the act allows school districts to issue debt in excess of either the 4.0 percent limitation or the 9.0 percent limitation not only for the district's portion of its state-approved classroom facilities project, but also for the cost of any "required locally funded initiatives" and the cost of site acquisition associated with the project, neither of which are paid for with state funds. (The School Facilities Commission may require school districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project.) The act also specifies that unvoted debt issued to pay a school district's share of its school facilities project under the "alternative finance method" does not count toward a separate 1.0 percent limit on unvoted debt, distinct from the 4.0 percent and 9.0 percent limits.

Third and finally, the act changes the deadlines for submitting requests for state consent to exceed the debt limits described above. Under prior law, if a school district proposed to issue debt that required the consent of the state Superintendent and the Tax Commissioner, the district had to request their consent at least 30 days prior to the election at which the question was to be submitted. The state Superintendent and the Tax Commissioner could waive that deadline or grant their consent after the election was held, if the district could show good cause for the waiver or for retroactive consent. H.B. 530 instead requires a district to submit its request for consent at least 105 days prior to the election and eliminates the waiver and retroactive consent provisions. At the same time, the act requires the state Superintendent to notify a school district of both the Superintendent's and the Tax Commissioner's decision on consent within 30 days after receipt of the requests. Thus, a district will know before the 75-day deadline for filing the ballot question whether or not the consents are granted. If a district's voters reject the issuance of debt, H.B. 530 permits the district to re-submit that question to the voters at the next election without again having to seek state consent (this applies only to the next election, not subsequent elections).

**Sales Tax Increment Financing: Revised Code Sections 333.01, 333.02.**

The act authorizes a board of county commissioners to return a portion of its piggyback sales and use taxes to a person who builds a retail facility that dedicates a portion of its property to education or exhibition activities and that will attract a large number of tourists. In order to qualify, this person will also have to make an investment of at least \$50 million in land, buildings, infrastructure, and equipment and create at least 150 new full-time jobs at the facility.

**Tax Increment Financing Changes: Revised Code Sections 3317.021, 5709.40, 5709.42, 5709.43, 5709.73, 5709.74, 5709.75, 5709.78, 5709.79, 5709.80 and several temporary law provisions.**

The act makes a number of changes to the Tax Increment Financing (TIF) law. These fall under three general headings: restrictions on TIFs, safeguarding of revenue from certain levies from TIF exemptions, and adjustments to how TIF-exempted values (and exempt values from other development tax incentives) are counted in the school foundation formula.

The act imposes some new restrictions on incentive district TIFs (those TIFs that are an aggregation of parcels in an area of up to 300 acres). Specifically, these restrictions include the following:

- A political subdivision may not create an incentive district TIF if it would cause the subdivision to have more than 25 percent of its potentially taxable real property value be exempt due to TIF incentive district exemptions.
- Municipalities, counties, and townships creating TIF incentive districts must provide additional information to the political subdivisions affected by the TIF exemptions, except that counties no longer have to provide any notice at all to affected municipalities (municipalities are no longer allowed to object to county incentive district TIFs or to enter into compensation agreements with the county creating the TIFs).
- TIF exemptions may not begin until the tax year following the effective date of the resolution or ordinance creating the TIF.

H.B. 66 protected certain tax levies from having their proceeds diverted to TIF equivalent funds. Essentially it tried to make the exempted parcels taxable for certain enumerated levies. The act instead requires that service payments — payments in lieu of taxes, or PILOTS — be made to the taxing authorities that are imposing the enumerated levies, in amounts equal to the amounts of tax money that the authorities would have received in the absence of the TIF exemptions. The PILOTS are required for incentive district TIFs created on or after January 1, 2006, but only if the foregone tax revenue is from a new levy, or is from the “new” portion of a replacement levy or renewal-with-increase levy. The act also added six additional levies to those already enumerated in H.B. 66 as being protected from revenue losses due to incentive district TIF exemptions.

Finally, the act made several clarifying changes to the H.B. 66 provisions that require compensation paid to school districts as a result of development tax incentives (not only incentive district TIFs but also enterprise zone exemptions, community reinvestment area exemptions, and others) to result in higher school district taxable values, higher “charge-off” amounts, and therefore lower state

aid payments to those districts. (Such compensation paid to school districts, whether as PILOTS or otherwise, is often referred to as “side payments,” and H.B. 66 essentially acted to reduce state aid proportionately when districts were both receiving additional state aid because of having exempted property but also receiving compensation for the lost tax revenues due to the exemptions.) The act also made changes to the reporting of school district compensation for these development tax exemptions.

**County Cigarette Tax for the Arts: Revised Code Sections 1333.11, 3381.15, 3381.17, 5743.021, 5743.025, 5743.03, 5743.04, 5743.05, 5743.08, 5743.081, 5743.12, 5743.13, 5743.321, 5743.33, 5743.34, 5743.35.**

The act authorizes a county with a population of more than 1.2 million to levy a cigarette tax, with voter approval, of up to 15 mills per cigarette (30 cents per pack) in order to support its regional arts and cultural district. Cuyahoga County voters passed a new 30 cents per pack levy in November 2006.

**Income Tax Exemption — National Guard Death Benefits and Life Insurance Premium Reimbursements: Revised Code Section 5747.01.**

Current law requires the Adjutant General to provide a \$100,000 death benefit to the designated beneficiary or beneficiaries of an Ohio National Guard member who has died while serving on active duty. It also requires the Adjutant General to reimburse any active duty member of the Ohio National Guard who purchases life insurance from the federal Servicemember’s Group Life Insurance Program for the monthly premium. The act allows the taxpayer to deduct the death benefit or reimbursement from Ohio adjusted gross income.

**Income Tax Exemption for Certain Trusts and Their Business Holdings: Revised Code Sections 5747.01 and 5751.01.**

The act allowed a trust created before 1972 to elect whether it, and any pass-through businesses it owns more than 5.0 percent of, would be subject to the commercial activity tax (CAT). If the election was made to be subject to the CAT, the trust would be exempt from the income tax. If the election was not made, the trust and its 5.0 percent-owned pass-through businesses are exempt from the CAT. The election was only available to a trust that was created before 1972, became irrevocable upon its creation, and the grantor of which was domiciled in Ohio when the trust was created. The trustee had to notify the Tax Commissioner that an election was made, thus resulting in an income tax exemption by April 15, 2006, and the election applied to taxes levied on and after January 1, 2006.

**Alternative School District Income Tax Bases: Revised Code Section 5748.02.**

School districts currently are allowed to utilize one of two different types of bases for the school district income tax: the traditional base, which is the same as the state base and which begins with Ohio adjusted gross income (OAGI); and a new base that essentially begins with compensation paid (and net earnings from self-employment) and excludes portfolio income and other items in OAGI. The act prevented school districts from levying under both bases at the same time.

**Commercial Activity Tax Changes: Revised Code Section 5751.**

The act excludes from the CAT tax base any taxes the taxpayer must collect on behalf of a taxing authority directly from a purchaser, not just sales and use tax collections. It also excludes payments between companies to reimburse one of the companies for payment of the tax. The act makes a number of other clarifying changes to the CAT tax statute as well.

**Commercial Activity Tax Exemption – Qualifying Distribution Center Receipts: Revised Code Section 5751.01.**

The act replaced an existing exemption for receipts from goods shipped from or delivered to certain locations in a qualifying foreign trade zone with an exemption for receipts of a supplier from certain property delivered to a qualifying distribution center located in Ohio. In order to qualify, a distribution center must have costs from suppliers exceeding \$500 million, ship more than 50 percent of qualified property (i.e., property included in determining the annual property costs) out of the State of Ohio, and must not be part of a combined taxpayer group. The supplier also cannot be a member of the qualifying distribution center's consolidated group.

**Am. Senate Bill 190, 126<sup>th</sup> General Assembly (effective November 22, 2005); Revised Code Sections 5725.31, 5729.07, 5733.42, 5747.39.**

Taxpayers that are corporations, financial institutions, dealers in intangibles, income taxpayers who invest in pass-through entities, and insurance companies may apply to the Director of Job and Family Services for a tax credit certificate. The tax credit is nonrefundable and is for a portion of the taxpayer's costs for providing certain job skill training. This act extends the tax credit for one year, to include costs paid or incurred on or before December 31, 2006.

**Am. Sub. S.B. 269, 126<sup>th</sup> General Assembly (effective September 21, 2006); Revised Code Section 5741.02.**

The act exempts from the state and local use tax items held by a person not for

the person's own use (typically inventory items) when donated to nonprofit charitable organizations, the state, or its subdivisions. Such donations would include donations to schools. Donations to the state and its subdivisions must be made exclusively for public purposes. The donation must be made without charge or compensation. No part of the net income of the nonprofit charitable organization receiving the donation may go to the benefit of a shareholder or individual. The charitable organization must not have a substantial part of its activities involve propaganda or attempting to influence legislation. The definition of charitable purposes for the use tax exemption is made by reference to the definition in the sales tax exemption statute (R.C. 5739.02 (B) (12)).

**Sub. S.B. 321, 126<sup>th</sup> General Assembly (effective June 5, 2006, certain provisions effective September 5, 2006); Revised Code Sections: Various.**

This act was the Tobacco Master Settlement Appropriation bill for the 126<sup>th</sup> General Assembly, but contained a number of tax provisions. The act modifies the tangible personal property tax replacement payment calculation for school districts when territory is transferred from one school district to another. The act also modifies the replacement payment calculation for districts in which the tangible personal property tax valuation has declined due to the relocation of property from a uranium enrichment facility. The act also makes fully refundable the tax credit that may be used to back loans to the Ohio Venture Capital Fund. The credit may be claimed against the personal income tax, the corporation franchise tax, the dealers in intangibles tax, the public utility excise tax, and the insurance company tax. The act also increases the maximum amount of technology investment tax credits (Edison Center credits) that may be issued by the Industrial Technology and Enterprise Advisory Council. The act increases the maximum amount of such credits from \$20 million to \$30 million.