OHIO LEGISLATIVE SERVICE COMMISSION

Russ Keller

Fiscal Note & Local Impact Statement

Bill: H.B. 430 of the 132nd G.A.

Status: As Reported by Senate Ways & Means

Sponsor: Rep. Schaffer

Local Impact Statement Procedure Required: Yes

Subject: Sales tax exemption for certain aspects of oil and gas production

State & Local Fiscal Highlights

	FY 2019	FY 2020	FUTURE YEARS
State General Revenue Fund			
Revenues	Loss up to $2.7 million	Minimal annual loss	Minimal annual loss
Local Government and Public Library funds (counties, municipalities, townships, and public libraries)			
Revenues	Loss up to $0.1 million	Minimal annual loss	Minimal annual loss
Counties and transit authorities			
Revenues	Loss up to $0.6 million from reduced local sales taxes	Minimal annual loss from reduced local sales taxes	Minimal annual loss from reduced local sales taxes

Note: The state or school district fiscal year is July 1 through June 30. For example, FY 2018 is July 1, 2017 – June 30, 2018. For other local governments, the fiscal year is the calendar year.

- H.B. 430 modifies the sales and use tax base as it has been administered by the Department of Taxation, which affects state sales tax revenue and revenue from local county permissive and transit authority sales taxes. The bill states, though, that it is "a remedial measure intended to clarify existing law."
- The Ohio Department of Taxation estimates that H.B. 430 reduces GRF receipts by up to $2.7 million in FY 2019 and minimal amounts in FY 2020. The tax department also anticipates applicable counties will lose a combined amount up to $0.6 million in local tax receipts in FY 2019 and minimal amounts in FY 2020.
- The state sales tax revenue effect would be shared by the state General Revenue Fund (GRF, 96.66% in FY 2019 and 96.68% thereafter), the Local Government Fund (LGF, 1.66%), and the Public Library Fund (PLF, 1.68% in FY 2019 and 1.66% thereafter). Funds deposited into the LGF and PLF are distributed to counties, municipalities, townships, and public libraries according to statutory formulas and decisions by county budget commissions.

Detailed Fiscal Analysis

H.B. 430 modifies the existing sales and use tax exemption for property used directly in producing oil and natural gas. Existing law exempts the sale or use of tangible personal property used "directly" in the production of crude oil or natural gas.

The bill modifies this language by exempting sales where the purpose of the purchaser is "to use or consume the thing transferred directly in production of crude oil and natural gas for sale. Persons engaged in rendering production services for others are deemed engaged in production." The bill subsequently enumerates more than two dozen instances of "thing transferred," and specifies whether or not it qualifies for the sales tax exemption. H.B. 430 also elaborates on the term "production" to mean "operations and tangible personal property directly used to expose and evaluate an underground reservoir that may contain hydrocarbon resources, prepare the wellbore for production, and lift and control all substances yielded by the reservoir to the surface of the earth."

Separately, H.B. 430 specifies that property used to control water pollution may qualify for existing property tax and sales and use tax exemptions even if the Department of Natural Resources is the agency that approves the property as qualifying pollution control property. Current law provides that the Ohio Environmental Protection Agency is qualified to make such approvals, as is "any other governmental agency having authority to approve installation of" water pollution control facilities.[1]

The bill states that it "is a remedial measure intended to clarify existing law and applies to all cases pending on a petition for reassessment or further appeal, or transactions subject to an audit by the Department of Taxation, on or after, May 18, 2018."

The bill's effect on the continuing sales tax exemption is not clearly apparent from the statutory language because the scope of the current exemption is determined largely by an administrative rule and prior decisions by courts and the Board of Tax Appeals. LSC staff found published reports that costs associated with drilling wells in Marcellus shale amount to approximately $9.7 million per well, of which about $1.9 million was described as related to "acquisition and leasing" or "permitting." Although these two aspects are nontaxable, LSC staff are uncertain about the taxable status of the remaining cost items, either under the Department of Taxation's administration of current law or under H.B. 430, so we lack sufficient information to provide an independent estimate of the revenue effects of the bill.

The Department of Taxation estimates that the bill will reduce GRF receipts up to $2.7 million in FY 2019, primarily due to the retroactive provision of the bill, and by minimal amounts in years thereafter. The Local Government Fund (LGF) and Public Library Fund (PLF) would lose up to $0.1 million in FY 2019 and minimal amounts in subsequent years. For those counties in which oil and gas production occurs, the local sales and use tax levied by those counties would lose a combined amount up to $0.6 million in FY 2019 and minimal amounts in future years.

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[1] R.C. 5709.20(L).