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H.B. 189
(1_135_0537-2)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 189's Bill Analysis](#)

Version: In House Ways and Means

Primary Sponsor: Rep. Cutrona

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill exempts from sales and use tax (SUT) the sales of certain personal firearms and ammunition. The provision will reduce annual GRF receipts by an amount between \$22.7 million to \$37.9 million, and reduce local sales tax collections by a combined amount of \$5.9 million to \$9.8 million per fiscal year.
- The bill authorizes a refundable tax credit, known as the “Constitutional Commerce Credit,” which may be claimed against the commercial activity tax (CAT) and the personal income tax (PIT). No more than \$10 million in credits can be issued in a single fiscal year.
- The credit would be granted to taxpayers making a capital investment of at least \$2 million in a new or expanded small arms and ammunition manufacturing facility. Credits may only be awarded after the taxpayer successfully applies to the Ohio Tax Credit Authority.
- Uncodified law in the main operating budget credits 1.7% of GRF tax sources to the Local Government Fund (LGF) and Public Library Fund (PLF) during the FY 2024-FY 2025 biennium. Therefore, the annualized loss to each fund would be between \$0.4 million and \$0.7 million. According to codified law, the LGF and PLF would each bear 1.66% of the tax revenue losses in FY 2026 and years thereafter.

Detailed Analysis

The bill authorizes both the Constitutional Commerce Credit and a sales and use tax exemption related to firearms and ammunition.

Sales and use tax exemption

The bill exempts from sales and use tax the sales of certain personal firearms and ammunition purchased on or after the first day of the first month that begins after the bill's 90-day effective date. Any nonshotgun firearm that is 50 caliber or smaller qualifies for the exemption, as does any shotgun that is 10 gauge or smaller (e.g., 12 gauge, 20 gauge, etc.). Ammunition is also exempt if it is designed for use in any such firearm.

Constitutional Commerce Credit

The bill authorizes a refundable tax credit, known as the "Constitutional Commerce Credit," for manufacturers of certain firearms and ammunition that build new or expanded facilities. The credit operates in a similar fashion to the job creation tax credit available under continuing law.¹ Eligible manufacturers must submit an application to the Ohio Tax Credit Authority (TCA). Upon approval, the two parties enter into an agreement that establishes various obligations, how the value of the credit will be calculated each year, and the length of the credit term. The value of the credit is calculated based on increases in payroll attributable to the new or expanded facility multiplied by a credit percentage specified in the agreement. The same payroll cannot be counted towards the bill's credit if it is used in calculating the job creation or job retention tax credits authorized under continuing law. The credit may be taken against either the commercial activity tax (CAT) or the personal income tax (PIT), and the TCA cannot issue more than \$10 million in credits in a single fiscal year.

If a taxpayer fails to meet any of the requirements or otherwise fails to comply with a tax credit agreement under the bill, the TCA may amend the agreement to reduce the credit percentage or term of the credit in the current or a future year.

The bill authorizes the Director of Development, in consultation with the Tax Commissioner, to adopt rules necessary to administer the tax credit program. These rules may require that applicants pay fees, credited to the Tax Incentive Operating Fund, to cover the credit's administrative costs.

Value of Constitutional Commerce Credit

The value of the credit is calculated based on increases in payroll attributable to the new or expanded facility ("Ohio employee payroll"). First, the TCA establishes the applicant's baseline payroll in Ohio based on the 12 months immediately preceding approval of the application, multiplied by a "pay increase factor" determined by the TCA. The credit for each year after completion of the project is then equal to the amount of Ohio employee payroll for the year in excess of that baseline year (the result is referred to as "excess payroll"), multiplied by a percentage specified in the agreement. The same payroll cannot be counted towards the bill's credit if it is used in calculating the job creation or job retention tax credits authorized under continuing law.

Fiscal effect

The bill's sales and use tax (SUT) exemption of certain personal firearms and ammunition would reduce annual SUT receipts by an amount between \$23.5 million and \$39.2 million.

¹ R.C. 122.17.

Counties and local transit authorities levy a local sales tax, which has the same base as the state tax. As such, this exemption would reduce local tax collections by a combined amount between \$5.9 million and \$9.8 million over a 12-month period. The state and local revenue losses may grow in future years at a pace that matches inflation. The GRF share of the SUT revenue loss would range from \$22.7 million to \$37.9 million per year, and the remaining losses – between \$0.8 million and \$1.4 million – would be split amongst the Local Government Fund (LGF) and Public Library Fund (PLF).

LBO arrived at these figures using state and national estimates of gun and ammunition sales. Unfortunately, it is difficult to accurately measure gun and ammunition sales. While gun manufacturers and sellers must keep records of their sales, they are not required to report those numbers to any state of Ohio or federal authority, and as such estimates of these sales vary. Instead, LBO used the number of background checks performed in Ohio over a 12-month period as a proxy to gun sales. According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), there were 656,926 background checks performed in Ohio in CY 2022.² This number was then multiplied by the estimated average price of a firearm, between \$400 and \$800. Ammunition figures were calculated using state estimates of the number of rounds produced, multiplied by the average price of an ammunition round depending on its caliber.

Due to uncertainties surrounding the Constitutional Commerce Credit, LBO regards the associated revenue loss as difficult to project. The actual foregone revenue is dependent on how many manufacturers begin or expand operations in the state once the credit is effective, how much they invest, the payroll resulting from their investment, and specific parameters of the agreements between eligible manufacturers and the TCA. However, the credit closely resembles that of the job creation credit,³ so LBO surmises that it is plausible the credit's cap of \$10 million could be reached in a single fiscal year. Since the Constitutional Commerce Credit must be taken against either the CAT or PIT, the GRF share will be 96.6% of the tax revenue loss during the FY 2024-FY 2025 biennium and 96.68% in years thereafter. The LGF and PLF would split the remaining losses.

There may be additional administrative costs to the TCA, as they now must evaluate applications related to the Constitutional Commerce Credit, and they must continue to monitor these agreements year to year to ensure that manufacturers continue to comply with the terms of the agreement. These additional administrative costs may be offset by fees paid by the applicants, if the Director of Development and the Tax Commissioner choose to adopt such rules.

Synopsis of Fiscal Effect Changes

The substitute bill replaces the small arms and ammunition manufacturing credit from the As Introduced version of the bill to the Constitutional Commerce Credit. The Constitutional Commerce Credit operates in a similar fashion to the job creation tax credit and has a cap of \$10.0 million each fiscal year, whereas the credit in the As Introduced version of the bill did not have such a cap. As such, the As Introduced credit had an indeterminate fiscal effect, but the

² More information on the [number of background checks](#) can be found on the Federal Bureau of Investigation website, [fbi.gov](https://www.fbi.gov).

³ A detailed estimate for the job creation credit in the [Tax Expenditure Report](#), which is found on obm.ohio.gov, shows that it reduces GRF receipts in excess of \$100 million per year.

Constitutional Commerce Credit will incur a fiscal effect of no more than \$10.0 million per fiscal year.