



Tax & Budget

Testimony to the Tax Expenditure Review Committee

Wendy Patton

Good morning, Chairman Oelslager and members of the committee. I am Wendy Patton, senior project director at Policy Matters Ohio, a nonprofit, nonpartisan research institute with the mission of creating a more prosperous, equitable, sustainable and inclusive Ohio. Thank you for this opportunity to testify today.

Today's review includes two of Ohio's top 20 largest tax breaks of the state's 129 tax expenditures. The tax exemption on building and construction materials is forecast to be among the top 20 in growth in size during this budget period. Altogether, the items you consider today represent more than \$460 million in annual forgone state revenues.

We raise questions about three items today: the tax break for egg farms, the tax break on construction materials and the tax break for warranties. In addition, we point out that advocates and stakeholders have failed to speak up in favor of some of the tax expenditures you have considered to date. These tax breaks in particular should be closely scrutinized for reduction or elimination. As we stated in previous testimony, every tax expenditure should have a specific, valid, known purpose or it should not exist.

Tax breaks where there has been bad behavior: Egg production exemption

Egg producers have their own tax exemption, which is somewhat broader than the exemption that covers other agricultural producers. It includes some transport equipment used at the place of production as well as packaging materials and equipment. Why does or should this industry have a separate and more generous tax exemption than other agricultural producers?

One big egg farmer has been investigated for using slave labor – human trafficking – in plants. The *Columbus Dispatch* described the investigation on April 23, noting: “*Frontline’s* investigation focuses on a group of Guatemalan teens who were smuggled into the country, then forced to work long hours in filthy conditions at area chicken farms, live in squalid trailers in Marion County, and have a significant portion of their paychecks directed to the individuals who arranged the trips and jobs.” The article notes that the contract for this illegal labor arrangement was with Trillium Farms, which produces eggs. Several people who worked for the contractor have been convicted and imprisoned; Trillium, which has ended its contract with the individuals involved and cooperated with the investigation, claimed it was unaware of the trafficking and has not been charged.

Ohio's egg farms also have a troublesome environmental record. In 2004, [Buckeye Egg Farms](#) paid \$880,598 in fines for pollution at their Ohio facilities. They sold the Ohio facilities to Ohio Fresh Eggs. In 2011, Attorney General Mike DeWine reached a \$635,000 settlement with [Ohio Fresh Eggs](#) for pollution and run-off poisoning central Ohio waters.

The Tax Expenditure Review Committee is the only group examining tax breaks for industries like this. House Bill 9 allows the committee to consider public policy objectives, including legislative history, sponsor intent, and effects on economic development, "high-wage jobs," and "community stabilization." We suggest this language allows you to

consider business behavior affecting the community as well as whether jobs created are good jobs. In addition, the statute allows consideration of state and local fiscal effects. The short- and long-term costs of pollution and of human trafficking should be part of the discussion surrounding this \$3.2 million tax break. Companies that don't maintain basic standards for their workers and the environment should not be eligible for tax breaks. While this tax break is smaller than others you are reviewing today, it is about equal to what it costs the Ohio EPA for response and investigation.

Tax breaks with mission creep: Building and construction materials

Lawmakers placed the exemption for building and construction materials in the tax code in 1959. It exempts construction materials used in building for the public sector. Over time, policymakers have added a number of other entities, too.

Not all states give a sales tax exemption of this type. Of the states (and District of Columbia) that have a sales tax, 12 states, including Ohio, impose the sales tax on building and construction materials but with broad exemptions for many types of organizations (see appendix for Ohio's exemptions); 31 have narrow exemptions, and 3 have no exemptions.¹

Today Ohio's exemption goes to building materials used in structures for public sector entities, religious, charitable, not-for profit, privatized and horticultural organizations. The exemption is granted for certain sports facilities and convention centers, scientific and technical entities, private schools and privatized transportation facilities, performance centers, hospitals and health care providers and family and factory farms. It grows as times and tastes change: In 2011 it was expanded to cover structures for captive deer, horses and fish farming.

The list of entities qualifying for building material exemptions has grown. Ohio's needs have also increased: more children need early education, colleges need to be more affordable, the opioid epidemic is growing and needs to be stopped. The committee should tighten up on who is eligible for this exemption so lawmakers can direct resources towards urgent needs for public investment.

Tax breaks that expand beyond their boundaries: Warranty

A sales tax exemption is provided for parts and labor purchased to make repairs on an item covered by a warranty. The premise is that sales tax is paid on the warranty itself when it is purchased by a consumer, and that sales tax then should cover all parts and labor purchased in repairs done under the warranty. If a dealer provides repairs beyond the period of the warranty for the purposes of goodwill, parts and labor continue to be exempted from the state sales tax.

Some states exempt the warranty itself at the time of sale; others tax the warranty. Some – like Indiana – have a different treatment of tangible personal property purchased under different types of warranty.

The Tax Expenditure Review Committee should examine more closely whether this exemption, and especially the "goodwill" extension, make sense in Ohio's economy. It costs the state \$53 million a year.

In sum, we bring these questions to your attention because this body, uniquely, has the right and ability to scrutinize these large programs of tax expenditures, update them, set guard rails, and make sure they are addressing Ohio's needs. To make such decisions, significant information is needed from the state, but also from stakeholders. As we have noted before, we need to know more about these expenditures, starting with the number of taxpayers who benefit from them. A number of tax breaks are broadening over time; overall, we need to understand when that reflects sound policy and when it amounts to a kind of "tax break mission creep." Overall, the committee should recommend cutbacks

¹ Multistate Corporate Tax Guide 2018, Volume II: Sales and Use Tax, "Construction contractors."

in tax breaks to provide revenue for needed services, and standards so that those tax breaks we do have support good jobs and strong communities.

Thank you for this opportunity to testify. I will be glad to take questions.

Appendix: Building and Construction Materials tax exemption

From Ohio Revised Code [5739.02 \(B\) 13](#):

- Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies;
- Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements;
- Building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock;
- Building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section....Ohio Revised Code [5739.02 \(B\) 12](#) - Charitable purposes" means:
 - The relief of poverty;
 - The improvement of health through the alleviation of illness, disease, or injury;
 - The operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions;
 - The operation of a home for the aged, as defined in section [5701.13](#) of the Revised Code;
 - The operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station;
 - The operation of a nonprofit animal adoption service or a county humane society;
 - The promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum;
 - The operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school;
 - The operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein;
 - The production of performances in music, dramatics, and the arts; or
 - The promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.
- Building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes;
- Building and construction materials sold for incorporation into the original construction of a sports facility under section [307.696](#) of the Revised Code;

- Building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;
- Building and construction materials for incorporation into a transportation facility pursuant to a public-private agreement entered into under sections [5501.70](#) to [5501.83](#) of the Revised Code; and,
- Until one calendar year after the construction of a convention center that qualifies for property tax exemption under section [5709.084](#) of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center; Such exemptions have been approved for facilities located in, and owned by:
 - County with population of more than 1.2 million; convention center or land upon which the convention center is located is owned or leased by the county.
 - Largest city in a county having a population between 700,000 and 900,000, owned by the city.
 - County of greater than 1 million in population; owned by convention facilities authority:
 - Largest city in a county having population of 235,000 to 300,000, owned by the city
 - City owned in county with population of 500,000 to 600,000 owned by the city in which the facility is located