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Revenue and budget

More public money to private interests

State lawmakers increase tax breaks while scrapping tax expenditure review

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Introduction

We all need clean water, safe streets, good schools and all the other public services that contribute to the quality of our life. We pool our tax dollars to pay for them. Not all entities pay the same taxes because state lawmakers give out tax exemptions, credits and deductions, formally known as tax expenditures.¹ The state of Ohio will forgo over \$9 billion in each year of the current two-year budget because of tax breaks: a little more than a third of the value of state taxpayer dollars used in the General Revenue Fund.²

Some tax expenditures help nearly everyone, like the personal exemption from the income tax or the sales tax exemption for prescription drugs. Some tax breaks help certain individuals and serve the greater good, like a sales tax break on prosthetic devices that helps people who have lost limbs function in society. Others, like the sales tax break on timeshares of private jets, are targeted at the very wealthy and do very little for the greater good. Some sales tax breaks help groups of corporations or organizations, like a tax break for vendors for submitting sales tax collections to the Ohio Department of Taxation or the sales tax exemption for churches and nonprofits.

In the new budget bill for 2022 and 2023 lawmakers agreed to spend over \$300 million through the tax code on new tax breaks, primarily to incentivize corporations to use temporary workers, and families to educate children at home or in private schools. Even as most state senators refused to phase in the new Fair School Funding Plan over time, ostensibly because they did not want to commit future legislators to such spending, many committed those same future legislators to spending hundreds of millions on new tax breaks in future budget periods.

State lawmakers do not review tax expenditures the same way they review budget expenditures. They scrutinize the state budget every two years. Though lawmakers may create, scrap or amend tax expenditures during the state budget process, there is no consistent, regular review for tax breaks. In 2016 the Ohio General Assembly established a review process for the state's tax breaks: The bill passed on a unanimous, bipartisan bicameral basis.³ This year they repealed it.

In this report we examine the largest, fastest-growing and newest tax expenditures listed in the 2022-23 report. We look at the new tax breaks created in the 2022-23 budget bill. We give examples of how other states successfully review tax breaks to ensure they are a good use of state resources and we consider why Ohio lawmakers failed to make this significant use of our shared resources more accountable to the voters.

¹ Ohio Department of Taxation, Tax Expenditure Report: The State of Ohio Executive Budget for Fiscal Years 2022-2023, <https://bit.ly/2TSYNIj>.

² LSC budget in brief at <https://bit.ly/3iduKNw>.

³ Patton, Wendy and Zach Schiller, "Weak review: Tax Expenditure Review Committee should balance tax breaks against Ohio's needs," Policy Matters Ohio, June 4, 2018 at <https://bit.ly/2TIOwIz>.

Tax expenditures in Ohio

Characteristics of Ohio's tax expenditures

We know about the state's spending through the tax code because Ohio, like most other states and the District of Columbia, reports on tax exemptions, credits and deductions in a report.⁴ Tax expenditures, also known as tax breaks or loopholes, lower the tax liability of individuals or organizations.

The Ohio Department of Taxation estimates Ohio's tax breaks, details them in the Tax Expenditure Report, and submits the report to the General Assembly as part of the governor's budget proposal.⁵ Estimates for the value of the tax breaks reflect the amount of financial benefit provided to recipients, adjusted to reflect the share of the tax expenditure that would have gone to the public through the state General Revenue Fund (GRF). They do not represent the amount that the state would immediately expect to gain if they were repealed, but instead, the Taxation Department's estimate of revenue that would have otherwise gone into the state GRF for legislators to use on public services.⁶

The most recent tax expenditure report, issued with the Governor's budget proposal last winter, estimated that in 2022 the state would forgo an estimated \$9.2 billion due to 138 tax expenditures; revenues forgone were forecast to rise by \$300 million to \$9.5 billion in 2023. It reported that there were 62 tax expenditures in the sales tax, 39 in the income tax and 38 in other business, utility, finance, tobacco and alcohol taxes. Sixty-two Ohio tax breaks have a value of more than \$20 million. Thirty-nine tax breaks have "minimal" value (less than \$1 million).

Figure 1 shows the shares of the tax breaks in terms of number and value for each type of tax over the biennium. The sales tax has the largest number of tax breaks, accounting for the largest loss of state revenues over the two-year budget period. The second greatest number and value of tax breaks are taken against the state personal income tax.

Since the tax expenditure report was released, lawmakers passed the 2022-23 budget, which included additional tax breaks. These new additions are discussed later in the report.

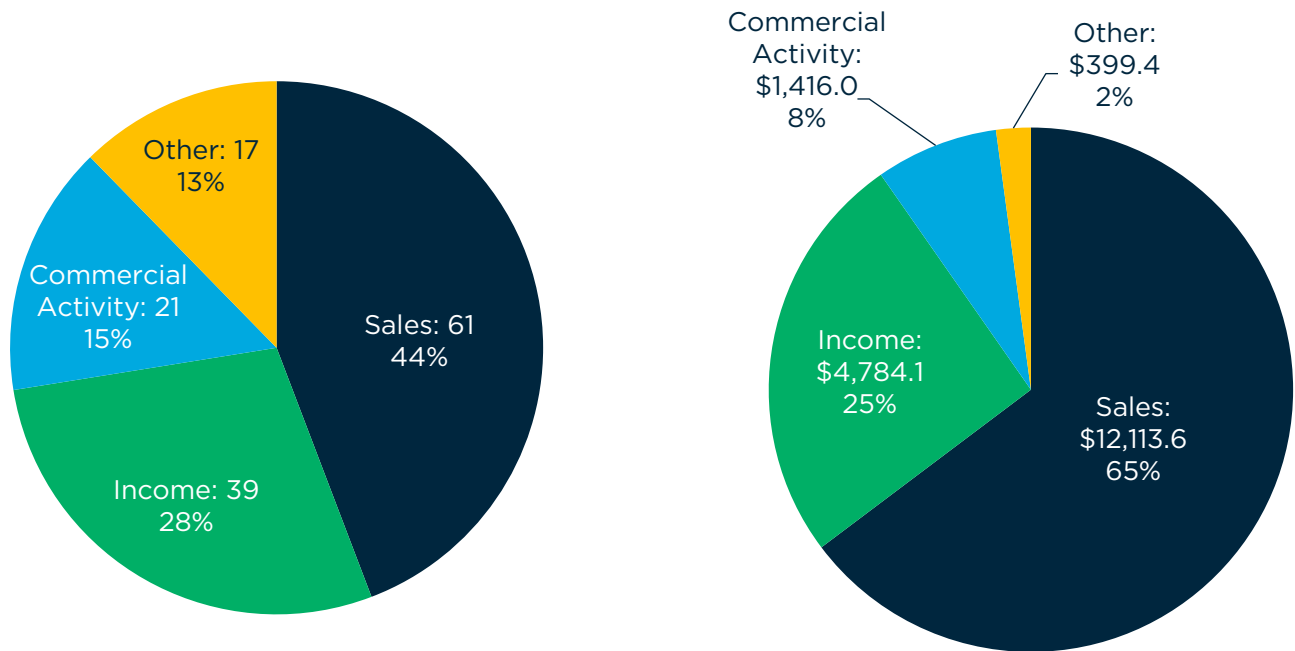
⁴ Institute for Taxation and Economic Policy, State-by-State Tax Expenditure Reports, January 31, 2017 at <https://bit.ly/2ZpiGRu>.

⁵ Ohio Department of Taxation, Tax Expenditure Report, The State of Ohio Executive Budget for Fiscal Years 2022-2023, <https://bit.ly/2TSYNIj>.

⁶ Patton, Wendy and Zach Schiller. "Ohio's ballooning tax breaks," Policy Matters Ohio, Sept 5, 2019, at <https://bit.ly/3wf0rtf>.

Figure 1

Tax breaks in the 2022-23 budget by type of tax exemption
2-year budget period; millions of dollars (where dollars are listed)
 Number of tax breaks Value of tax breaks



Source: Policy Matters Ohio, based on the Ohio Tax Expenditure Report for 22-23.

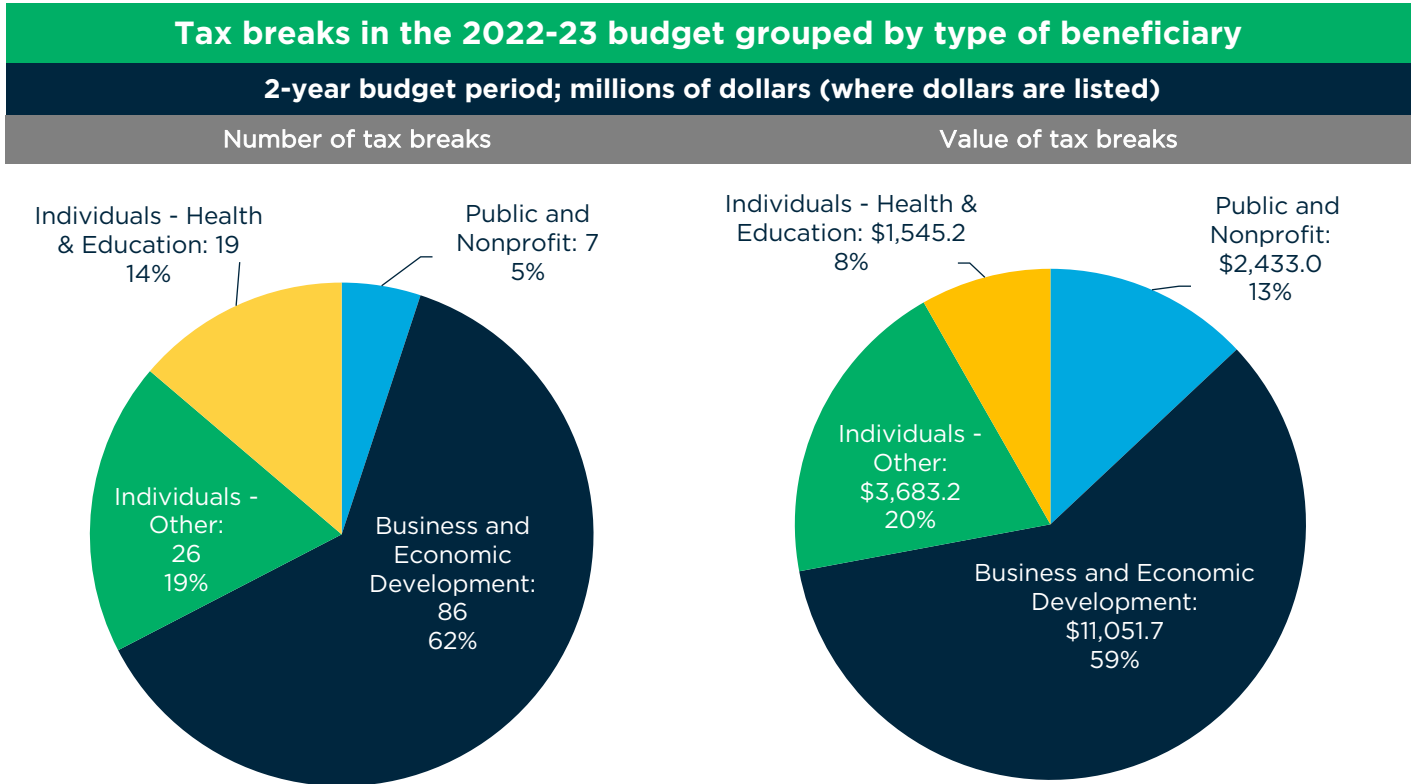
In addition to the tax breaks listed in the 2022-23 tax expenditure report, lawmakers added eight new tax breaks — some that will start after 2023 — and eliminated one in the biennial budget bill. Those new additions, along with the elimination and some modifications, are described in a later section of this report.

Tax breaks by type

Using the definitions developed by the state Department of Taxation in the 2010-11 tax expenditure report, we analyzed current tax breaks by type of beneficiary. The business and economic development category has the most tax breaks and biggest share of revenues forgone.

Figure 2 illustrates the types of tax expenditure beneficiaries in terms of number of tax breaks and total value of tax breaks.

Figure 2



Source: Policy Matters Ohio, based on the Ohio Tax Expenditure Report for 22-23.

Tax breaks for business & economic development: Of Ohio’s 138 tax expenditures listed in the most recent tax expenditure report, 86 (62%) will benefit business and economic development. This category includes tax breaks for all sectors: manufacturing, retail, food preparation, agriculture, mining, communications and telecommunications, utilities and more.

The state will forgo an estimated \$11.1 billion on these tax breaks in the 2022-23 biennium. In terms of value, this accounts for 59% of the estimated total of \$18.7 billion in forgone revenues over the two-year period.

Tax breaks that benefit individuals: There are 40 tax breaks that benefit individuals: 26 are general, like the personal exemption and various retirement exemptions to the income tax, and 14 are specifically for health or education purposes. The state will forgo \$5.2 billion in tax breaks for individuals in 2022-23, 28% of total revenues forgone. About \$1.5 billion are in tax breaks intended for education and health purposes and \$3.7 billion for more general purposes.

Altogether, lawmakers increased tax expenditures for individuals by an estimated \$254 million (5.1%) over the biennium. They increased tax breaks for health and education purposes by an

estimated \$146 million or 10.4%. Those that benefit individuals in ways other than in education and health will grow by an estimated \$108 million (3.0%).

Tax breaks for public sector & nonprofits: Just seven tax breaks — 5% of the 138 listed tax breaks — benefit the public sector⁷ and nonprofits. Ohio’s definition of nonprofits is generous in some tax expenditures. For example, the tax break for construction materials for public and nonprofit facilities can be used by private schools, performing arts, scientific and technical organizations, and sports facilities.⁸

The state will forgo \$2.4 billion on these seven tax breaks in the 2022-23 budget, accounting for 13% of total revenues forgone. These tax breaks will grow by an estimated \$194 million (8.7%) over the biennium.

Tax breaks by size & growth

We examined the 20 biggest tax breaks and, in this section, focus on two of the largest. We use several others to illustrate common issues arising in special interest tax breaks.

Materials and parts used in manufacturing goods: Lawmakers spend 62% of revenues forgone to tax expenditures on for-profit corporations and developers. Of this, 34% is for just one tax break: the sales tax exemption of materials and parts used in manufactured goods. The purpose of this tax break is to help corporations avoid a build-up or “pyramiding” of sales taxes that would drive up the cost of goods manufactured or assembled in Ohio.⁹

LLC loophole: Although the table lists it one notch lower, the second largest tax break is the Ohio business income deduction, also known as the LLC loophole. Only half of the cost is counted as a tax break. The other half has been written into the tax code, as described below. This tax break benefits owners of corporations organized as “pass-through businesses.” In these entities, the tax liability on business earnings is not the responsibility of the firm but the owner, who pays through their personal income tax filing. The loophole allows owners to deduct 100% of income up to \$250,000 and then — in a rule incorporated in the tax code — to only pay a 3% rate on income over that, almost 25% lower than the state’s top income tax rate they would otherwise apply.¹⁰ The estimate for this tax break in Table 1 does not include the significant revenue forgone by the state because of the preferential top rate on these earnings over \$250,000.¹¹ In 2020 and 2021, the top rate on the highest bracket of income — that over \$221,300 — was 4.797%, so the wealthiest people who wrote off \$250,000 through the Ohio Business Income Deduction enjoyed a substantial benefit from the lowered rate of the 2022-23 budget. So did all others who earned funds above the third bracket, which starts at \$44,250.

⁷ Elimination of the sales tax on materials the state uses in facilities it owns and uses reduces redundancy in accounting.

⁸ Brainerd, Jackson and Savannah Gore, National Conference of State Legislatures, NCSL Memo to Sen. Scott Oelslager on Regional Comparison of Select Sales & Use Tax Exemptions, May 8, 2018, at <https://bit.ly/3i9W4vR>.

⁹ Patton, Wendy and Zach Schiller. “Ohio’s ballooning tax breaks,” Policy Matters Ohio, Sept 5, 2019, at <https://bit.ly/3wf0rtf>.

¹⁰ The state’s 4.97% personal income tax rate on the top bracket of income — greater than \$221,300 in 2020 — was just reduced to 3.99% in the new budget bill for 2022-23.

¹¹ Patton, Wendy and Zach Schiller. “Ohio’s ballooning tax breaks,” Policy Matters Ohio, Sept 5, 2019, at <https://bit.ly/3wf0rtf>.

The Ohio Department of Taxation estimated that the revenue loss due to the tax break and the 3% preferential tax rate on other earnings was \$1.171 billion in 2017.¹² Yet in that year, the official tax expenditure report — which covered just the tax break, not the top preferential rate — estimated cost to the state in 2017 was just \$559 million.¹³

The \$690.8 million forecast for the Ohio business income deduction by 2023 is understated because it does not include revenue loss due to the preferential top tax rate of 3%, which is lower than the new top tax rate of 3.99% that would apply to income greater than \$250,000.

Table 1

20 largest tax expenditures in 2022-23 Ohio Tax Expenditure Report					
2022-23 budget compared to prior, 2-year budget 2020-21 (millions of \$\$, not inflation adjusted)					
Tax expenditure	Type	2020	2021	2022	2023
Property used primarily in manufacturing	Sales	\$1,823.9	\$1,783.5	\$1,846.8	\$1,917.2
Sales to churches and certain other types of nonprofit organizations	Sales	\$627.9	\$658.1	\$707.6	\$735.6
Ohio business income deduction	Income	\$688.4	\$656.4	\$656.2	\$690.8
Prescription drugs and selected medical supplies	Sales	\$481.5	\$501.0	\$525.8	\$554.3
Personal, spousal and dependent exemption	Income	\$492.6	\$493.1	\$500.5	\$519.6
Social security and railroad retirement benefits	Income	\$340.1	\$338.0	\$338.2	\$350.8
Building and construction materials used in certain structures	Sales	\$297.8	\$290.3	\$298.9	\$312.0
Tangible personal property (TPP) used in agriculture	Sales	\$289.8	\$288.8	\$290.3	\$292.7
Sales of TPP and services to electricity providers	Sales	\$270.7	\$258.1	\$271.3	\$276.9
Transportation of persons and property	Sales	\$256.0	\$251.8	\$264.9	\$278.2
Packaging and packaging equipment	Sales	\$240.0	\$237.3	\$245.2	\$252.8
Qualifying distribution center receipts	CAT	\$196.6	\$213.4	\$225.1	\$238.3
Exclusion of first \$1 million of taxable gross receipts	CAT	\$215.3	\$221.1	\$226.6	\$231.4
Value of motor vehicle trade-ins	Sales	\$207.1	\$198.3	\$214.0	\$227.1
Joint filer credit	Income	\$199.4	\$193.4	\$192.0	\$199.9
TPP and services used in providing telecommunications services	Sales	\$138.7	\$141.5	\$147.3	\$153.2
Resident credit for income taxed by another state	Income	\$152.6	\$145.0	\$134.9	\$143.0
Sales to the state, its subdivisions & certain other states	Sales	\$132.5	\$132.1	\$134.4	\$136.5
TPP used directly in providing public utility services	Sales	\$104.5	\$103.3	\$109.5	\$111.2
Job creation credit	CAT	\$107.9	\$110.8	\$107.4	\$111.5

Source: Policy Matters Ohio, based on the Ohio Tax Expenditure Report for 22-23. (2020-21 revenues are actual, 2022-23, are estimated.)

The table above shows Ohio's biggest tax expenditures, listed by size in state revenues forgone in the 2022-23 biennium. Revenues forgone are shown year over year for 2020 through 2023.

¹² E-mailed communication from Kerrie Ryan of the Ohio Department of Taxation to Zach Schiller, Policy Matters Ohio, August 16, 2021.

¹³ Ohio Tax Expenditure Report for 2028-19, Ohio Department of Taxation at <https://bit.ly/2VQTzq9>

Policymakers add to some breaks over time: The exemption for building and construction materials ranks 7th on the list of biggest tax breaks. Lawmakers placed it in the tax code in 1959 and applied it to construction for the public sector. Over time, policymakers have added a number of other entities, including private and horticultural organizations, 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. Lawmakers add to this tax expenditure as times and tastes change: In 2011 they expanded it to cover structures for captive deer, horses, and fish farming.¹⁴

Tax breaks are maximized by corporate tax planning: The tax break for qualifying distribution centers is taken against the Commercial Activity Tax (CAT). It goes to suppliers of certain distribution and warehousing firms, called qualified distribution centers (QDCs) by the state, that buy at least \$500 million a year of goods and ship at least half of them outside Ohio. They can avoid paying the CAT on products they ship from these warehouses out of state. In calculating the cost of this tax break to the state, the tax department estimated 70% of shipments of the largest component of the beneficiaries — pharmaceutical distributors — would be rerouted if not for this tax break.¹⁵ Lawmakers allowed this tax break to balloon from \$26 million forgone in 2008 to \$238.3 million in 2023. In 2017, former Budget Director Tim Keen noted that this provision is used as a tax planning device to reduce CAT liability for instance, by simply delivering inventory to Ohio from warehouses in neighboring states.¹⁶ According to its qualifying certificate for the tax break, for example, Cardinal Health’s Groveport distribution center ships none of its product to Ohio locations.¹⁷

Without review, tax breaks can subsidize bad corporate behavior: Another oddity of the tax break for qualified distribution centers is that 98.7% of its value benefits the pharmaceutical industry,¹⁸ including some distributors that were sued by the state of Ohio and numerous counties and cities for their alleged role in the opioid crisis. The egg producer tax breaks benefit one egg producer — Trillium Farms — that was investigated for human trafficking. Over time, it has benefitted others who were found guilty of polluting the regional water supply and paid hefty fines.¹⁹

¹⁴ Patton, Wendy and Zach Schiller. “Tax breaks to tighten, trim or trash,” Policy Matters Ohio, March 27, 2019, at <https://bit.ly/378AlbS>.

¹⁵ Memorandum to Ernest Massie, Administrator, Tax Analysis Division from William Ullrich, Analyst, Tax Analysis Division, “Tax Expenditure Report FY 2022-2023: Commercial Activity Tax Exclusion For Qualifying Distribution Center Receipts,” dated August 28, 2020, e-mailed from the Ohio Department of Taxation office of communications.

¹⁶ Patton and Schiller, “Tax Breaks to tighten, trim or trash,” Op.Cit.

¹⁷ Ohio Department of Taxation, Distribution Center Qualifying Certificate, Qualifying Year of January 1, 2021 through December 31, 2021, Cardinal Health National Logistics Center, at <https://bit.ly/3miDmVd>.

¹⁸ Memorandum to Ernest Massie, Op.Cit.

¹⁹ Patton, Wendy, Testimony before the Tax Expenditure Review Committee, May 9, 2018 at <https://bit.ly/2WxUhsf>; Patton, Wendy and Zach Schiller. “Tax breaks to tighten, trim or trash,” Policy Matters Ohio, March 27, 2019, at <https://bit.ly/378AlbS>.

Fastest growing tax expenditures over \$20 million

The Taxation Department projects strong growth in some of Ohio's largest tax breaks, but smaller tax breaks also shoot to the top of the ranks. What we see in the projections for size of tax breaks is a mixture of small new economic development programs (or renewed growth in programs slowed by the pandemic and recession) and very large tax breaks, as the economy recovers. Table 2 shows the top 20 tax breaks with the projected fastest growth in the 2022-23 tax expenditure report.

Opportunity Zone tax credit: The fastest-growing tax expenditure is the Opportunity Zone tax credit, a state income tax break given in the 2020-21 budget bill to enlarge tax benefits for investors in federally designated "Opportunity Zones." The federal program gives a federal tax break on capital gains on earnings used in these zones. Enacted in 2019, the tax break grew by a total of \$77 million (302%) between the last two-year budget and the 2022-23 budget. Although the Opportunity Zone program is touted as aiding poor neighborhoods, the tax credit primarily benefits the wealthiest tax filers.²⁰

Motion picture tax credit: The motion picture tax credit ranks third with 74% growth. Ohio sets aside \$40 million a year to compete with California's spending of \$330 million; Georgia's \$606 million and New York's \$420 million. These three states kept 75% of the film production market in the decade between 2007 and 2016 despite big changes in state tax credits.²¹ Over the past decade, 13 states have ended or defunded their film subsidy and another five narrowed or capped these incentives.²²

²⁰ Patton, Wendy, Testimony to the Senate Finance Committee, June 14, 2019 at <https://bit.ly/2Mqi86Z>.

²¹ Independent Fiscal Office, "Pennsylvania Film Production Tax Credit: An evaluation of program performance," January 2019 at <https://bit.ly/31fXAIT>. Note that other states spend hundreds of millions — Georgia and Louisiana in particular — but have very small shares of the market, which is dominated by California and New York. Cited in Patton, Wendy and Zach Schiller. "Ohio's ballooning tax breaks," Policy Matters Ohio, Sept 5, 2019, at <https://bit.ly/3wfOrtf>.

²² State Film Production Incentives and Programs, National Council of State Legislatures, February 5, 2018 at <https://bit.ly/3i311FX>.

Table 2

Twenty tax expenditures over \$20 million with the fastest rate of growth						
2022-23 budget compared to 2020-21 budget (millions of \$\$, not inflation adjusted)						
Tax expenditure	Type	2020	2021	2022	2023	Growth
Opportunity Zone Tax Credit	Income	\$0.8	\$24.8	\$43.7	\$59.2	302.0%
Motion picture tax credit	Income	\$9.7	\$16.6	\$20.8	\$24.9	73.8%
Deduction for excess medical expenses	Income	\$18.7	\$21.2	\$23.9	\$26.5	26.3%
Historic structure rehabilitation credit	Income	\$42.5	\$38.3	\$43.1	\$57.5	24.5%
Food sold to students on school premises	Sales	\$26.1	\$24.1	\$31.0	\$31.4	24.3%
Exclusion for professional employer organizations	CAT	\$16.6	\$18.1	\$19.7	\$21.5	18.7%
Exemption for certain purchases by electronic publishers	Sales	\$16.6	\$18.0	\$19.4	\$21.0	16.8%
Artificial limbs, prostheses and other medical equipment	Sales	\$74.9	\$82.5	\$87.0	\$91.6	13.5%
Qualifying distribution center receipts	CAT	\$196.6	\$213.4	\$225.1	\$238.3	13.0%
Sales to churches and certain other types of nonprofit organizations	Sales	\$627.9	\$658.1	\$707.6	\$735.6	12.2%
Prescription drugs and selected medical supplies	Sales	\$481.5	\$501.0	\$525.8	\$554.3	9.9%
Deduction for taxpayers not eligible for employer sponsored medical plan	Income	\$53.7	\$56.3	\$59.0	\$61.9	9.9%
Items used in storing, preparing and serving food	Sales	\$38.2	\$37.3	\$40.3	\$42.3	9.4%
Motor vehicles sold in Ohio for use outside the state	Sales	\$55.4	\$55.4	\$58.8	\$62.1	9.1%
Credit for increased research and development	CAT	\$47.0	\$49.2	\$51.4	\$53.5	9.0%
Value of motor vehicle trade-ins	Sales	\$207.1	\$198.3	\$214.0	\$227.1	8.8%
Sales by churches and certain types of nonprofit organizations	Sales	\$50.3	\$50.0	\$52.6	\$55.4	7.7%
Property used in highway transportation for hire	Sales	\$46.5	\$41.7	\$45.7	\$48.9	7.3%
TPP and services used in providing telecommunications services	Sales	\$138.7	\$141.5	\$147.3	\$153.2	7.2%
Transportation of persons and property	Sales	\$256.0	\$251.8	\$264.9	\$278.2	7.0%

Source: Policy Matters Ohio, based on the Ohio Tax Expenditure Report for 22-23. (2021 figures are actual; 2022-23 figures are estimated.)

Professional employment organizations (PEOs): One of the fastest-growing credits in 2022-23 is the exclusion of services of PEOs from the commercial activity tax. PEOs provide human relations, payroll and related functions on an outsourced basis. This sector's 18.7% projected growth rate places it 6th among the fastest-growing tax breaks in 2022-23.

Tax breaks that will grow fast in the future: In the new budget bill, lawmakers provided an income tax deduction for people who make a profit from selling their business or their ownership stake in an Ohio business. The Legislative Budget Office and the Department of Taxation estimates revenue forgone will range from the upper tens of millions to hundreds of millions of dollars.²³ Another authorizes an income tax deduction for all or a portion of profits made by those who invest in "venture capital operating companies" (VCOCs) certified by the director of development. The Legislative Budget Office estimates an income tax revenue loss of tens of millions per year beginning in fiscal year (FY) 2027.²⁴ Venture capital is the riskiest form of investing: It is unlikely lawmakers who value the appearance of prudence would have approved stand-alone legislation. An existing state venture capital program failed to earn enough to cover the debt service for the bonds that funded it, and the tax credits that guaranteed the bonds subsidize that program.²⁵ Revenue lost to the state will be an estimated \$14.3 million a year over the next biennium.²⁶

Largest growth in tax expenditures

The two biggest tax expenditures listed in the report — sales to churches and nonprofits, and property used in manufacturing — will have the greatest growth in total value in the 2022-23 budget period compared to the 2020-21 budget period. Table 3 shows mostly tax expenditures that show up in the earlier tables.

²³ Ohio Legislative Service Commission comparison document for House Bill 110, the 2022-23 budget bill, at <https://bit.ly/3782Wng>.

²⁴ Ibid.

²⁵ Patton, Wendy, "Testimony on House Bill 110 before the Senate Finance Committee," May 18, 2021 at <https://bit.ly/2VRXraq>.

²⁶ Ohio Tax Expenditure Report, Ohio Department of Taxation, part of the 2022-23 executive budget proposal at <https://bit.ly/3CKwxSl>.

Table 3

Tax expenditures with largest absolute growth						
2022-23 budget compared to 2020-21 (millions of \$\$, not inflation adjusted)						
Tax expenditure	Type	2020	2021	2022	2023	Growth
Sales to churches and certain other types of nonprofit organizations	Sales	\$627.9	\$658.1	\$707.6	\$735.6	\$157.2
Property used primarily in manufacturing	Sales	\$1,823.9	\$1,783.5	\$1,846.8	\$1,917.2	\$156.6
Prescription drugs and selected medical supplies	Sales	\$481.5	\$501.0	\$525.8	\$554.3	\$97.6
Opportunity Zone Tax Credit	Income	\$0.8	\$24.8	\$43.7	\$59.2	\$77.3
Qualifying distribution center receipts	CAT	\$196.6	\$213.4	\$225.1	\$238.3	\$53.4
Value of motor vehicle trade-ins	Sales	\$207.1	\$198.3	\$214.0	\$227.1	\$35.7
Transportation of persons and property	Sales	\$256.0	\$251.8	\$264.9	\$278.2	\$35.3
Personal, spousal and dependent exemption	Income	\$492.6	\$493.1	\$500.5	\$519.6	\$34.4
Building and const materials used in certain structures	Sales	\$297.8	\$290.3	\$298.9	\$312.0	\$22.8
Contributions to a certified Rural Business Growth Fund credit	Insurance	N/A	\$0.0	\$10.9	\$10.9	\$21.8
Exclusion of first \$1 million of taxable gross receipts	CAT	\$215.3	\$221.1	\$226.6	\$231.4	\$21.6
Artificial limbs, prostheses and other medical equipment	Sales	\$74.9	\$82.5	\$87.0	\$91.6	\$21.2
Packaging and packaging equipment	Sales	\$240.0	\$237.3	\$245.2	\$252.8	\$20.7
TPP and services used in providing telecommunications services	Sales	\$138.7	\$141.5	\$147.3	\$153.2	\$20.3
Historic structure rehabilitation credit	Income	\$42.5	\$38.3	\$43.1	\$57.5	\$19.8
Sales of TPP and services to electricity providers	Sales	\$270.7	\$258.1	\$271.3	\$276.9	\$19.4
Motion picture tax credit	Income	\$9.7	\$16.6	\$20.8	\$24.9	\$19.4
TPP used directly in providing public utility services	Sales	\$104.5	\$103.3	\$109.5	\$111.2	\$12.9
Exemption for municipal utilities and nonprofit waterworks	Public Utility	\$96.2	\$99.1	\$102.2	\$105.4	\$12.3
Food sold to students on school premises	Sales	\$26.1	\$24.1	\$31.0	\$31.4	\$12.2

Source: Policy Matters Ohio, based on the Ohio Tax Expenditure Report for 22-23. (2021 figures are actual; 2022-23 figures are estimated.)

Changes since the last report

In the tax expenditure report for 2020-21, there were 134 tax breaks; in the 2022-23 tax expenditure report, there are 138. New tax breaks in the 2022-23 report included:²⁷

- **Feminine hygiene products:** This is a sales tax exemption, with estimated value of \$7 million a year.
- **Exports that are temporarily in Ohio for storage, packaging or consolidation before shipment outside the United States:** This sales tax exemption is projected to result in revenues forgone of less than \$1 million annually.
- **Motor fuel used for powering refrigeration units on vehicles other than units that provide comfort for the operator or occupants:** This is a sales tax exemption, projected have less than \$1 million in annual impact.
- **Diapers or incontinence underpads prescribed to a person covered by Medicaid who has been diagnosed with incontinence:** This sales tax exemption is estimated at a value of less than \$1 million a year.
- **Lead abatement:** This is credit is taken against the state personal income tax, with a projected cost in revenues forgone of \$1 million in 2023.
- **Certain disability severance payments for honorably discharged veterans:** This deduction is taken against the personal income tax, with an estimated value of less than \$1 million annually.
- **Out-of-pocket expenses for professional development and classroom supplies for qualifying educators:** This is taken against the personal income tax. The deduction is projected to have less than \$1 million in annual impact.

Tax breaks eliminated over the past two years

- **Investment bullion and coins:** This tax break is taken against the sales tax and had a value of \$5.5 million annually during last biennium. Lawmakers have repealed and reinstated it twice. Gov. Kasich vetoed the first reinstatement.²⁸ He later signed it into law; it was repealed again in the 2020-21 budget and now has been reinstated in the 2022-23 budget.

²⁷ This information is taken from the 2020-21 tax expenditure report, Op.Cit.

²⁸ Patton, Wendy and Zach Schiller. "Tax breaks to tighten, trim or trash,"

- **Sales of qualified tangible personal property to motor racing teams:** Taken against the sales tax, this tax break had an estimated cost to the state of less than \$1 million a year.
- **Campaign contribution credit:** This tax break for individuals was taken against the Individual income tax; it had a value of \$3.1 million annually last biennium. Lawmakers repealed it in the budget bill for 2020-21 but later reinstated it within the same two-year budget period.
- **Pass-through entity share of financial institutions tax:** This tax break was taken against the financial institutions tax. It had a value of \$5.1 million annually last biennium. Changes to the Financial Institutions Tax wiped out the need for this tax break.

Tax breaks in House Bill 110, the 2022-23 budget bill

Legislators added eight new state tax breaks and modified five in HB 110, the current budget bill. It will cost the GRF between \$324 and \$391 million in revenue, and local governments between \$66.6 and \$77.3 million in revenue, according to estimates by the Ohio Department of Taxation and the Legislative Budget Office. Lawmakers also committed potentially hundreds of millions in tax expenditures for the 2024-25 and the 2026-27 budget periods.

Three of the new tax breaks — valued at more than \$100 million over the 2022-23 biennium — give incentives to people donating to private school scholarships; families sending their children to private schools, and parents who home-school their children. These tax breaks significantly expand public subsidies for private schools in the 2022-23 budget bill — even though the vast majority of Ohio children attend public schools.

While most lawmakers said that they could not commit future General Assemblies to a phase-in of the new public school funding formula included in the budget bill, they committed future legislators to potentially hundreds of millions of dollars in tax breaks scheduled to begin in the future. Changes to the “Transformational Mixed Use Development Program” tax break will push costs of an estimated \$188 million into the 2024-25 biennium, and a change to the “Rural Business Growth Fund” tax break will cost the state an estimated \$10.9 million in 2025, according to the Taxation Department. Two new tax breaks will affect state revenues in 2027. One will benefit wealthy investors in venture capital and may cost tens of millions of dollars a year. Another will benefit business owners or investors who sell their stakes in an Ohio business. This one could potentially cost hundreds of millions of dollars each year.

Tax breaks that lawmakers modified or eliminated are also listed below. Lawmakers enacted numerous property tax breaks that affect local government; they are not covered here.

- **Income tax credit for home-schooling:** This provision provides a tax credit of up to \$250 for items used directly for home-school instruction for one or more children. Estimated loss to state revenues range from \$4 million over the biennium to \$7.2 million.²⁹
- **Income tax credit for scholarships for private schools:** Legislators created a tax break of \$750 for cash donations made to nonprofit scholarship-granting organizations (SGOs) that are certified by the attorney general. The scholarships must be for primary and secondary school students and must prioritize awards to students with low incomes. The Department of Taxation must post a list of approved SGOs on its website. The credit allows investors in a pass-through entity that files a composite return on the investors' behalf to claim the credit for the entity's donation. The Ohio Department of Taxation estimated this tax break will cost up to \$101 million over the biennium; the Senate majority caucus pegged the biennial cost at \$75 million.³⁰
- **Income tax credit for private school tuition:** Lawmakers dramatically expanded funding to private schools in the 2022-23 budget bill. This is one of several tax breaks and policy changes that send state resources to the private system, draining resources from the public system, which serves the vast majority of Ohio's children. This non-refundable tax credit can be taken against the state income tax to defray the cost of private school tuition. It provides a smaller tax credit (\$500) to families of lower income, and a higher benefit to (\$1,000) for families earning between \$50,000 and \$100,000 a year. The Taxation Department estimates revenue losses to be \$8.4 million over the biennium; the Legislative Budget Office estimated the cost at about \$6 million, counting in the impact on local governments as well as on the state GRF.³¹
- **Income tax deduction for capital gain from sale of a business:** This new tax break will allow certain business owners to deduct capital gains from selling interests in their businesses: either the capital gain from such a sale or a percentage of the business payroll over a specified period. The deduction is provided to people who either "materially participated" in a business that was headquartered in Ohio for the

²⁹ The Ohio Department of Taxation estimated cost to the GRF of \$3.6 million a year (Impact of Enacted House Bill 110 [FY 2022-2023 state operating budget], Estimates by Ohio Dept of Taxation, in concert with Ohio OBM General Revenue Fund Impacts, July 2, 2021). The Legislative Budget Office estimated the cost to be about \$2 million a year to the GRF (comparison document, Ohio Department of Taxation, at <https://bit.ly/3fYuVKX>). The cost to the state estimated by the Senate majority caucus was \$5.6 million over the biennium, according to e-mailed communication from the Senate majority caucus.

³⁰ Impact of Enacted House Bill 110 (FY 2022-2023 state operating budget), Estimates by Ohio Dept of Taxation, Op. Cit. For local estimate, impact of Enacted House Bill 110 (FY 2022-2023 state operating budget), Information from the Senate majority caucus pegs the expense at \$75 million over the biennium.

³¹ Ibid.

five preceding years or those who made a venture capital investment of at least \$1 million in such a business. This does nothing to help Ohio’s economy; it would simply drain revenue from the budget. The Legislative Budget Office estimated revenue loss could amount to millions or tens of millions when the tax break takes effect, in 2027 or 2028.³² The Ohio Department of Taxation estimated the loss could potentially be in the hundreds of millions in each of those years.³³ Ohio law already favors pass-through business owners with a deduction that eliminates the income tax they would otherwise pay on income up to \$250,000. There is no justification for another deduction that will further deplete state revenue needed for public services.

- **Venture capital gains:** This new tax break will begin in and after 2026. It gives an income tax deduction for the capital gains of investors in certain Ohio-based “venture capital operating companies” (VCOCs) certified by the director of development. The Taxation Department estimates a loss of about \$9 million per year beginning in FY 2027.³⁴

The Ohio public already pays just over \$14 million a year in a failed venture capital effort.³⁵ Policymakers backed funds for the state’s public venture capital program with bond financing guaranteed by the promise of tax credits if the program failed to generate enough money to service the debt. The program failed to cover the debt service and now state resources are tapped to subsidize this most risky of investment strategies.

- **Sales tax break for corporations to use temporary workers and other employment services:** Employment services contract with employers to provide them with temporary personnel or other human resource functions. This break exempts employment services and employment placement services from the sales and use tax. It gives firms an incentive to use temporary workers instead of making permanent hires, which makes no sense if state investment of public resources are supposed to create good jobs.³⁶ Transit agencies and state and local governments will lose over \$300 million over the biennium, costing the state around \$230 million and local governments between \$67 and \$77 million.³⁷
- **Metal bullion and coins:** Reinstates the sales and use tax exemption for sales of investment metal bullion and investment coins. Applies to sales made on or after October 1, 2021. This is the second time this tax break has been reinstated after

³² Legislative Budget Office, Comparison Document for HB 110, the 2022-23 budget bill, at <https://bit.ly/3fYuVKX>.

³³ Impact of Enacted House Bill 110 (FY 2022-2023 state operating budget), Estimates by Ohio Dept of Taxation, Op. Cit. For local estimate, see Comparison Document for the Ohio Legislative Service Commission analysis of House Bill 110, Op. Cit.

³⁴ Ibid.

³⁵ The tax expenditure report from the Ohio Department of taxation estimates the state will pay \$14.3 million in 2022 and again in 2023 to cover the debt service of this venture capital program (<https://bit.ly/2XtxUEZ>).

³⁶ Heller, Jake and Erik Ortiz, “Temp Work Now a Permanent Fixture, Creating Problems for ‘Invisible’ Workforce:” These workers represent the underclass in the U.S. workforce who hold an integral role in the country’s ever-growing, on-demand economy. NBC News, August 31, 2017 at <https://nbcnews.to/3j3HdUn>

³⁷ Ibid.

repeal, as described above. It will diminish state GRF revenues by about \$10 million over the biennium, and local sales tax revenues by about \$3 million.³⁸

- **Megaproject tax incentive program:** This provision expands and extends a variety of state and local tax incentives to attract “megaprojects,” defined as a development project that includes at least \$1 billion in investment or creates at least \$75 million in Ohio payroll. It includes an exclusion from the Commercial Activity Tax revenues from the sale of tangible personal property (machinery and equipment) to a megaproject operator. The break also increases the maximum number of years a job creation tax credit may be awarded from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier.³⁹

When a handful of lawmakers first introduced a stand-alone bill to create the break, Policy Matters Ohio testified: “Senate Bill 95 is a flawed, extreme measure. It appears to have grown out of Wisconsin’s huge incentive package for Foxconn, which has still not been built and in the delay, has changed its promise of blue-collar jobs to research jobs. Uncertainty continues around timing, product, and other critical outcomes. The Foxconn experience is cause to avoid creating a giant new incentive program in Ohio.”⁴⁰ Lawmakers did not pass SB 95 when it was exposed to public comment but slipped it into the budget where it received no separate attention and has become law.

Lack of a cap could mean these revenue losses can be expected to escalate over the 30-year term of these incentives. For example, lawmakers allowed the Commercial Activity Tax exemption for suppliers to big distribution centers that deliver most of their product outside Ohio to expand from \$25.5 million in FY 2008 to an anticipated \$238 million by 2023.⁴¹

Modified tax breaks in the budget bill

- **Transformational mixed use development tax credit:** Extends the sunset date by two years of an existing insurance premium tax credit for capital contributions to the construction of a transformational mixed-use development. Revenue loss associated with the tax credit will be incurred in FY 2024-25; the Taxation Department estimates it will cost \$188.5 million.⁴²
- **Rural business development credit:** Re-ups the rural business development program by another \$45 million (in total, not per year) and changes eligibility, allowing entities

³⁸ Impact of Enacted House Bill 110 (FY 2022-2023 state operating budget), Estimates by Ohio Dept of Taxation, Op. Cit. For local estimate, see Comparison Document for the Ohio Legislative Service Commission analysis of House Bill 110, Op. Cit.

³⁹ Ibid.

⁴⁰ Patton, Wendy, Testimony on HB 95 to the Senate Ways and Means Committee, May 21, 2019 at <https://bit.ly/3lYXfRb>.

⁴¹ Ohio Tax Expenditure Report, Ohio Department of Taxation, submitted as part of the executive budget proposal for 2022-23 at <https://bit.ly/3ADzuCf>.

⁴² Impact of Enacted House Bill 110 (FY 2022-2023 state operating budget), Estimates by Ohio Dept of Taxation, Op. Cit.

that are not within state boundaries to qualify for financing under this program. The cost is put off until fiscal years 2024-25, with estimated cost of \$10.9 million in that biennium.⁴³

- **Motion picture tax credit:** In HB 110, the budget bill, lawmakers narrowed the motion picture tax credit to eliminate eligibility for production contractors: persons other than the production company that are involved in a motion picture or Broadway theatrical production.⁴⁴
- **Opportunity Zone tax break:** Broadens eligibility for a state Opportunity Zone tax credit allocation and makes the credit transferrable, so investors who don't pay the state income tax can benefit. Increases, from \$1 million to \$2 million, the limit on the amount of credits that may be awarded to an individual during a fiscal biennium. There is no cost to these changes.⁴⁵
- **Beer and wine tax exemption:** Expands the tax exemption related to certain types of production. The cost to the state was not quantified.⁴⁶
- **Kilowatt Hour Tax:** This change was not a modification but a clarification. Lawmakers clarified rules around electricity produced for internal use or for co-generation by an end-user; cost to the state estimated at \$6.1 million over the biennium.⁴⁷

Eliminated in the budget bill: Accountability

Tax Expenditure Review Committee: In 2016, Policy Matters and other advocates lauded Ohio's state lawmakers for passing a bill to start regularly reviewing tax breaks. The legislation to create the Tax Expenditure Review Committee (TERC) passed on a unanimous, bicameral, bipartisan basis.⁴⁸ However, lawmakers found living up to the promise of good government harder than anticipated. They eliminated the TERC in the 2022-23 budget bill, after failing to carry out its mandates in the 2020-21 budget period.

In state fiscal year 2018, its first full year of operation, the Tax Expenditure Review Committee reviewed 15 sales-tax breaks with a value of \$5.5 billion in revenues forgone to state and local government in 2018. They were growing more rapidly than the rate of inflation. The Tax Expenditure Review Committee held three hearings. The Department of Taxation provided brief descriptions of each item, estimated forgone state revenue and any departmental and court guidance that might exist, and the Legislative Service Commission

⁴³ Ibid.

⁴⁴ Comparison Document for the Ohio Legislative Service Commission analysis of House Bill 110, Op. Cit.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Patton and Schiller, "Weak Review," Op.Cit.

(LSC) provided summary information on founding statutes and revenues forgone to local government. Notices for committee hearings invited stakeholders to provide testimony and address criteria outlined in the statute. No witnesses came forward to explain the need for eight of the 15 tax expenditures under review. Committee members approved all 15 to continue without modification.⁴⁹ Ohio's state lawmakers did not bother to review tax breaks in the last budget period. They eliminated the Tax Expenditure Review Committee in the current budget bill.

Other states' lawmakers regularly review and evaluate tax expenditures meant to spur economic development:

- Washington state, a leader in tax break oversight, releases an annual overview of all state and local tax expenditures and their impact on beneficiaries and state revenues by tax and by sector.⁵⁰
- California's tax expenditure report provides information on legislative intent and number of beneficiaries for each tax break.⁵¹
- The Maryland Department of Budget and Management studies individual tax breaks. It found a biotech incentive ineffective and recommended improvement through coordination with related programs, better targeting and improving administrative procedures.⁵²
- Virginia's evaluation of the state's sales-tax exemption for nonprofits surveyed the tax break in other states and found in some places it is far narrower than in others.⁵³
- Texas law requires an incidence study of each tax break, allowing lawmakers and the public to understand the income levels of beneficiaries for major tax breaks.⁵⁴
- Massachusetts lawmakers created its Tax Expenditure Review Commission in 2018 to review each tax expenditure every five years and evaluate its purpose and effectiveness.⁵⁵ Its first report covered 26 tax expenditures and flagged several for legislative review.⁵⁶
- Vermont officials have conducted tax expenditure reporting for 16 years, and in 2016 established a schedule for expedited and full reviews of certain tax expenditures. The 2021 review suggested narrowing one exemption to better meet its purpose and provided recommendations for improvement for several other expenditures.⁵⁷
- Beginning in 2014, Indiana has analyzed the effectiveness of state and local tax incentives annually. The state evaluated 62 tax incentives during the first cycle of the

⁴⁹ Ibid.

⁵⁰ Washington State Department of Revenue, "Tax Exemptions 2016," at <https://bit.ly/3idMw3c>.

⁵¹ State of California Department of Finance, "Tax Expenditure Report 2020-21," at <https://bit.ly/2V2Kq5N>.

⁵² Maryland Department of Legislative Services, "Evaluation of the Biotechnology Investment Incentive Tax Credit," November 2017, at <https://bit.ly/3i342X2>.

⁵³ Commonwealth of Virginia Division of Legislative Services, "Exemption for Nonprofit Organizations," October 2014, at <https://bit.ly/3fa11Tr>.

⁵⁴ Texas Comptroller of Public Accounts, "Tax Exemptions and Tax Incidence Reports," December 2020, at <https://bit.ly/3zONNnb>.

⁵⁵ Massachusetts Department of Revenue, "Tax Expenditure Review Commission," at <https://bit.ly/3rJ8FcQ>.

⁵⁶ Massachusetts Tax Expenditure Review Commission, "Biennial Report of the Tax Expenditure Review Commission," March 2021, at <https://bit.ly/3f6TIBG>.

⁵⁷ Vermont Legislative Joint Fiscal Office, "2021 Tax Expenditure Reviews," January 15, 2021, at <https://bit.ly/3rTLNYd>.

review process (2014-2018), and 53 incentives are scheduled for the second cycle (2019-2025).⁵⁸

Ohio lawmakers could do similar reviews, but they have turned away from accountability in spending through the tax code. This is consistent with the values expressed in the budget process by Ohio's state lawmakers over the past 15 years. These lawmakers cut \$7 billion out of tax revenues since 2005 with cuts that overwhelmingly helped the wealthiest people and corporations.⁵⁹ They spend over \$9 billion a year in tax breaks and tax cuts. At the same time, this year Education Week gave Ohio a grade of "C" in school finance. (The Fair School Funding Plan, included in the budget bill, should improve that grade, if lawmakers remain committed to it.)⁶⁰ Ohio has among the worst Black infant and maternal mortality rates in the nation,⁶¹ and cut aid to local governments in half.⁶² Cleveland and Dayton rank second and third this year among the nation's cities with a population of more than 100,000 for number residents experiencing poverty, according to the World Population Review.⁶³ Tax cuts and tax breaks don't target, address and solve this failure. State lawmakers could partner with local leaders and invest in excellent schools, expanded public transit, access to employment centers, job training, health care and safe parks to spark a rebirth in these places — instead of more tax breaks.

Recommendations and conclusion

Ohio lawmakers' parsimonious budgeting does not extend to their spending through the tax code. In the 2022-23 budget bill lawmakers give away as much as \$469 million in state and local resources through the tax code in new tax breaks, primarily to incentivize companies to use temporary workers and families to educate children at home or in private schools. Even as senators refused to phase-in the new Fair School Funding Plan over time, ostensibly because they did not want to commit future legislators to such spending, they committed those same future legislators to spending hundreds of millions on new tax breaks.

A decade ago, Ohio's 128 tax breaks were projected to reach \$7 billion in the 2012-13 budget period.⁶⁴ Lawmakers have since increased the number of tax expenditures by 14% to 146 in total, and increased their worth by 29% to over \$9 billion, not adjusted for

⁵⁸ Indiana Office of Fiscal and Management Analysis, "2020 Indiana Tax Incentive Review," October 2020, at <https://bit.ly/3idGXSO>.

⁵⁹ Patton, Wendy, "Budget Bite: State Tax Platform," Policy Matters Ohio, March 10, 2021 at <https://bit.ly/3jT5w6p>

⁶⁰ "State grades on School Finance," EdWeek Research Center, Education Week, June 1, 2021 at <https://www.edweek.org/policy-politics/state-grades-on-school-finance-2021-map-and-rankings/2021/06>

⁶¹ Ohio Department of Health at <https://bit.ly/3yW5XmI>

⁶² Just one element of state aid to local government, the Local Government Fund, was set at 3.68% of state taxpayer revenues in the General Revenue Fund: That share has been cut to 1.66%.

⁶³ Poorest cities in 2021, World Population Review at <https://bit.ly/3xPioje>

⁶⁴ Schiller, Zach, "\$7 Billion in Ohio Tax Breaks and Nobody's Watching," Policy Matters Ohio, March 2011 at <https://bit.ly/2Wf2r23>.

inflation. Legislative efforts to add accountability failed as the General Assembly voted to eliminate the Tax Expenditure Review Committee. Ohioans deserve better.

Ohioans should require their elected state leaders to be more accountable. Tax breaks for special interests should be treated to the same scrutiny and debate as budgetary spending for public programs like Adult Protective Services, college financial aid and parks and recreation services. If lawmakers do not want a special committee to review tax breaks, then the funding for each tax break should be re-appropriated in each budget bill, just as funds for programs and public services are scrutinized, evaluated and reappropriated every two years. The Ways and Means Committees of each side of the General Assembly should be responsible for ensuring the people of Ohio fully understand:

- **Who benefits from each tax break:** Understanding each tax expenditure should begin with data on how many entities are benefiting from it.
- **The purpose of each tax break:** Every tax expenditure should have a specific, known, valid purpose or it should not exist. Budget scrutiny should evaluate whether the tax break is still needed and effective for the original purpose.
- **Whether beneficiaries are good neighbors:** Legislative committee members would be responsible for ensuring beneficiaries are paying taxes, complying with state laws, and providing information that allows appropriate review of the tax break. They should monitor whether non-management workers are paid enough that they and their family members do not need public benefits such as Medicaid and food aid.
- **Movement of operations and assets:** Committee members should require corporations that receive tax breaks disclose production shifts to foreign locations and whether their employees were made eligible for Trade Adjustment Assistance; this should also include the impact on all affected communities if an operation benefitting from a tax break is moved from one Ohio site to another.
- **County-by-county impact of state tax breaks:** Ohioans should understand the impact of sales-tax exemption by county and transit agency and how state tax breaks affect local budgets. New tax breaks are contributing to a loss of public services that benefit all people, not just special interests.

Too many Ohio lawmakers have prized cutting taxes in a manner that benefits the wealthiest people and corporations, taking billions out of the pool of public resources.⁶⁵ Spending through the tax code too often benefits select groups and special interests instead of funding public services that are available to everyone.

State lawmakers should turn their attention to the pressing needs of residents and target our pooled resources for what we all need: clean water, safe streets, good schools and all the other public services that contribute to the quality of our life. It's up to the voters to make that happen.

⁶⁵ Patton, Wendy and Zach Schiller, "Rebalance the Income Tax to Build a Better Ohio for Everyone," Policy Matters Ohio, October 15, 2020 at <https://bit.ly/3iaG254>.

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