



HANDBOOK

Ohio County Commissioners

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209 East State Street • Columbus, Ohio 43215-4309

Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

CHAPTER 17

COUNTY PERMISSIVE TAXES

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17.01 INTRODUCTION

In 1967 the General Assembly granted counties the authority to enact four permissive taxes: the sales and use, real estate transfer, motor vehicle registration, and utility service taxes. This grant of authority significantly changed how counties could fund county programs and services.

The law, as enacted, provided that county commissioners could enact the taxes by resolution, subject to a voter initiated referendum by residents. All of the taxes, with the exception of the motor vehicle registration tax, were to be used for county general fund purposes and for the administration of the tax. The motor vehicle registration tax was to be used solely for highway related purposes. These permissive taxes are popularly referred to as “piggyback taxes”, as they are enacted locally on top of statewide taxes enacted by the General Assembly.

Since the original enactment of the county "permissive tax package" in 1967 numerous changes have been made to the law, especially to the permissive sales and use tax. The county permissive sales and use tax law, for example, has been amended by increasing the maximum rate of taxation; expanding the methods by which the tax may be enacted; allowing the tax to be used for a series of specific uses, in addition to the general fund; and, by changing various other technicalities of the law. In addition, the permissive real estate transfer tax has been changed to allow the tax to also apply to manufactured homes.

In addition, the General Assembly has granted counties two new permissive tax options since the original county “permissive tax package” was enacted in 1967. In 1980 counties were granted the authority to levy a permissive lodging tax, commonly referred to as the “bed tax”. The primary purpose of this tax is to fund the operations of convention and visitors’ bureaus operating in the county. In other counties special permissive lodging taxes have funded certain capital improvement projects that will be discussed in Chapter 21 of this *Handbook*.

In 1986 counties were authorized to enact a permissive liquor and cigarette tax for the purpose of financing the construction and operation of a sports facility for major league professional sports. In 1990 legislation was passed that allowed the enactment of a tax on beer, wine, cider and mixed beverages for sports facilities, in addition to the previously enacted permissive liquor tax. Then, in 2006, the Legislature authorized counties with a population of more than 1.2 million persons to enact an additional cigarette tax for regional arts and cultural districts. However, in 2008 the Legislature repealed the authority to enact any new alcoholic beverage and cigarette taxes, although the taxes previously approved by the electors in Cuyahoga County will remain in effect until these taxes expire.

The balance of this Chapter will generally discuss the various permissive taxes. Chapters 18 through 21 of this *Handbook* will discuss the detailed provisions of law relating to major permissive taxes including enactment options; allowable uses of the revenue derived from the taxes; public hearing requirements; and, how the taxes may be increased, reduced or repealed, including procedures for a referendum and an election to repeal a tax that has been enacted by resolution of the county commissioners.

17.02 COUNTY PERMISSIVE SALES AND USE TAXES

Counties may enact a permissive sales and use tax at a rate of not more than 1½% and may be levied in ¼% increments. Actually, there are two different statutory authorities under which permissive sales and use taxes may be enacted. There is the sales and use tax authorized by ORC Sections 5739.021 and 5741.021. For the purpose of this Chapter this tax, which may not exceed 1.0%, is referred to simply as the “sales and use tax”. The other sales and use tax, which may be enacted at a rate of not more than ½%, is authorized by ORC Sections 5739.026 and 5741.023, and is referred in this Chapter as the “additional sales and use tax”. The additional sales and use tax is also sometimes commonly referred to as the “third half percent tax”.

The sales and use taxes are enacted together. The sales tax applies to retail sales subject to the state sales tax, and the use tax applies to the use, storage, or consumption of motor vehicles, watercraft, and outboard motors that must be titled. The use tax also applies to any taxable purchase made from another county or state if the permissive sales tax has not been paid.

In addition, county commissioners who have established a county transit board or operate a county transit system (ORC 306.01-306.13) may also enact up to an additional 1½% transit tax (See ORC Sections 5739.023 and 5741.022). The board of commissioners of any county with a county transit system or a regional transit authority may also levy up to an additional ½% sales tax under ORC Section 5739.026 for the purpose of funding that county transit system or transit authority. Likewise, a regional transit authority (ORC 306.30-306.99) may enact a sales and use tax at a rate not to exceed 1½%, however, the board of trustees of the regional transit authority, not the board of county commissioners, is the taxing authority. Both of these permissive taxes will be explained in more detail in Chapter 18.

The permissive sales and use tax is the single largest source of revenue to the county general fund in most counties. Current information on the county permissive sales and use tax is available on the web site of the Ohio Department of Taxation. This link will allow readers to view a map that shows current county rates and shows a recent history of collections for both counties and regional transit authorities: http://tax.ohio.gov/divisions/tax_analysis/tax_data_series/sales_and_use/publications_tds_sales.stm .

17.021 SALES AND USE TAX

The purpose of the permissive sales and use tax authorized by ORC Sections 5739.021 and 5741.021 is to provide additional monies for the general fund, for criminal and administrative justice services, and to administer the tax. It may be levied at the rates of ¼%, ½%, ¾%, or 1.0%. It can be levied for a specified number of years or for a continuing period of time. County commissioners also may reduce this tax to a lower authorized rate after its enactment and they may repeal the tax.

If the commissioners propose that the tax is to be used for criminal and administrative justice services special provisions apply. In this case, the commissioners must prepare a statement showing the amount that has been spent for criminal and administrative justice services from the general fund for the two previous years and an estimate of the amount that will be spent during the current year. In addition, the commissioners must also prepare a preliminary plan on how they anticipate money will be spent on these services during the next two years from both the general fund and the special fund that must be established if the tax is enacted for the purpose of criminal and administrative justice services.

Also, if the tax is to be used for both general fund and for criminal and administrative justice services, the resolution enacting the tax must state the rate or amount of the tax to be apportioned to each purpose. The rate or amount may be different for each year the tax is in effect, but the rates or amounts actually apportioned each year cannot deviate from that stated in the resolution enacting the tax.

A more detailed discussion of these issues along with enactment and repeal methods and procedures, public hearing requirements, and other details contained in the law are discussed in Chapter 18.

17.022 ADDITIONAL SALES AND USE TAXES

In addition to the sales and use taxes described in previous section, counties may enact an additional sales and use tax of $\frac{1}{4}\%$ or $\frac{1}{2}\%$ under ORC Sections 5739.026 and 5741.023. This gives commissioners the authority to enact sales and use taxes of up to $1\frac{1}{2}\%$. The additional sales and use tax, sometimes referred to as the “third half percent tax”, can be levied for a specified number of years or for a continuing period of time. Unlike the other sales tax, county commissioners may not reduce this tax to a lower authorized rate (i.e. reduction from $\frac{1}{2}\%$ to $\frac{1}{4}\%$), unless the tax is used exclusively for the county general fund. The additional sales and use tax may be used for one or more of the following specific uses:

1. To provide revenue for bonds or notes issued by a convention facilities authority and to provide operating revenues for the authority.
2. To provide revenues for a county transit board or regional transit authority.
3. To provide revenues for permanent improvements distributed by a Community Improvements Board and to retire bonds for such improvements.
4. To provide additional revenue for the county general fund.
5. To provide revenue for any specific permanent improvement or class or group of permanent improvements enumerated in the resolution enacting the tax and to retire bonds for such improvements.
6. To provide revenue for the implementation and operation of a 9-1-1 phone system. If the tax is used for 9-1-1 purposes it may not be enacted for a period of more than five years, unless it is combined with one of the other authorized purposes for which the tax may be levied.
7. To provide revenue for the operation or maintenance of a detention facility.
8. To provide revenue to finance the construction or renovation of a sports facility to house major league professional sports teams.
9. To provide revenue for the acquisition of agricultural easements.
10. To provide revenue for the provision of ambulance, paramedic, or other emergency medical services.

If the county proposes to use the tax revenues for more than one of these purposes, the county commissioners must establish the method which will be used to determine either the amount or the proportion of the tax revenue which will be allocated during each year the tax is in effect for each of the authorized purposes. The allocation need not be the same for each year the tax is in effect, but the resolution must clearly state the method which will be used each year.

This allocation methodology is difficult to change. It may be amended for any year after a public hearing if the proposed amendment is approved by each governing board whose allocation would be reduced. Under no circumstances may the allocation methodology be reduced before the sixth year if the tax was enacted for a continuing period of time. In addition, no amendment is allowed as long as bonds are outstanding if the tax was enacted for a convention facilities authority, a community improvements board, specific permanent improvements, transit purposes, or for agricultural easements.

Provisions for the enactment and repeal of the additional sales and use tax will also be discussed in detail in Chapter 18.

17.03 PERMISSIVE REAL PROPERTY AND MANUFACTURED HOME TRANSFER TAX

Any county may levy and collect a permissive real property and a permissive manufactured home transfer tax. In the case of real property, the tax is levied on each deed conveying real property or any interest in property located in the county. In the case of a manufactured home, the tax is levied on each certificate of title that conveys, by resale a used manufactured or a used mobile home.

The rate of the permissive tax may not exceed three mills or 30 cents per \$100 of value, and must be levied at a uniform rate (ORC Chapter 322). This tax is in addition to the one mill mandatory transfer fee that is collected by the county auditor and deposited into the general fund (ORC 319.54(G)(3)).

The authority to levy a permissive real property transfer tax was enacted in 1967 as a part of the county "permissive tax package". In 1999, the 122nd General Assembly enacted S.B. 142 that included extensive changes to Ohio law concerning manufactured homes. The primary purpose of the bill was to treat manufactured homes the same as other homes from a regulatory and tax perspective. One of the provisions of the new law was the enactment of ORC Section 322.06 that allowed counties that had enacted the real property transfer tax to also levy a permissive manufactured home transfer tax at the same rate as the real property transfer tax.

This tax could be enacted to become effective not sooner than January 1, 2000. The tax is levied on each certificate of title that conveys, by resale, on or after January 1, 2000 a used manufactured or a used mobile home. A used manufactured or mobile home is defined in (ORC 5739.0210 (A)(6)) as a home "the legal title to which is being

transferred or previously has been transferred by an owner other than a new motor vehicle dealer.” The original sale of a new manufactured or mobile home by a dealer to an owner requires the sales tax to be paid on the basis of the dealer’s cost.

The funds collected are to be used first for the administration and enforcement of the tax, with the balance to be deposited in the county general fund. Exceptions from collection of the tax include:

1. The amount secured by a mortgage which has been of record at least 12 months prior to the date of conveyance and which is assumed by the purchaser, and
2. The difference between the full amount of consideration and the unpaid balance owed to the seller at the time of the conveyance of property to a third party under a land installment contract that has been of record at least 12 months prior to the date of conveyance.

In addition, transfers are also exempt from the permissive tax if they are exempt from the one mill mandatory fee. These exemptions are detailed in ORC Sections 319.54(G)(3)(a)-(y). During 2008, for example, 45.5% of the transfers were exempt from the transfer tax.

The general provision of law that requires the tax to be levied at a uniform rate was modified in 1999. Under the provisions of S.B. 41, effective in September 1999, commissioners were authorized to prescribe a lower rate for both the permissive real property and manufactured home transfer tax for homes that qualify for the homestead exemption or manufactured home homestead exemption programs. This authority would allow the exemption of any or all of any locally enacted transfer tax, including the ability to exempt qualifying properties from the entire permissive rate, but not from the one mill mandatory transfer fee. However, if the commissioners provide an exemption from the real property transfer tax, the board must also grant the same exemption from the manufactured home transfer tax.

The permissive real property transfer tax and the permissive manufactured home transfer tax may be enacted or repealed by the methods described in Chapter 19 of this *Handbook*. This source of revenue, in 2008, generated \$99 million for county general funds: \$31.4 million from the mandatory one mill fee and \$67.6 million from the permissive real estate transfer tax. Additional data on this tax is available on the web site of the Ohio Department of Taxation at: http://tax.ohio.gov/divisions/tax_analysis/tax_data_series/publications_tds_property.stm#RealPropertyOnly

17.04 PERMISSIVE MOTOR VEHICLE LICENSE TAXES

Counties have the authority to enact up to \$15 in motor vehicle license taxes in three separate increments of \$5 each. These taxes are levied on top of the uniform statewide fee of \$34.50. In addition, municipalities and townships have various authorities to levy

their own permissive taxes. The total state and local license tax, however, may not exceed \$54.50.

The first \$5 tax was authorized when the “permissive tax package” was enacted in 1967. Under this law, counties had until June 30, 1968, to enact the tax exclusively. If a county had not enacted this \$5 tax by this date, then any municipality in the county could enact this \$5 tax. While the original law provided that such a municipal enactment precluded subsequent county enactment anywhere in the county, the law now allows counties to enact this tax subsequent to its enactment by one or more municipalities. In this case, however, the county tax cannot apply within municipalities that enacted the tax prior to the time the county enacted the \$5 tax authorized in 1967.

In 1987 the General Assembly enacted legislation that granted counties the authority to enact an additional \$10 tax, in two \$5 increments. Counties were given the exclusive authority to enact the first new \$5 tax until April 1, 1989. If the county did not enact this tax by this date, then any municipality could enact this \$5 tax. Similarly, counties had the exclusive authority to enact the second new \$5 dollar tax until April 1, 1991. If the county did not enact this tax by this date, then any municipality in the county could enact this \$5 tax. The county may enact these two \$5 taxes at any time; however, the taxes cannot apply within municipalities that enacted the taxes prior to the time the county enacted these two \$5 taxes authorized in 1987.

The distribution of each of these three \$5 dollar taxes, if enacted by the county, is different. For the first \$5 tax authorized in 1967, a fund must be established in the county treasury for all revenues from municipal registrations for use by the municipalities upon application. The remaining revenues are allocated to the county engineer.

For the first \$5 tax authorized in 1987, 50% of the money from municipal registrations is distributed to the municipality of registration, 30% of the money from unincorporated areas is distributed to the township of registration, and the balance is allocated to the county.

For the second \$5 dollar tax authorized in 1987, 30% of the revenue is distributed to the township of registration, and the balance is allocated to the county. This means that the county is entitled to all revenues derived from municipal registrations from this second \$5 tax authorized in 1987.

In addition to these two new 1987 \$5 county taxes, townships and municipalities may enact, at any time, their own \$5 taxes, not contingent upon any action by the county. A county is not required to enact the 1967 tax before enacting the 1987 taxes, but the second \$5 tax authorized in 1987 may not be enacted before the first \$5 tax authorized in 1987. Both 1987 taxes may be enacted by the county at the same time.

All three of these taxes are collected and distributed by the state. Counties which enacted the original \$5 tax prior to any municipality must approve any municipal project

and the municipal funds are distributed by the county. All other funds to which the municipalities are entitled are distributed directly to the municipality by the state. All funds to which the townships are entitled are distributed to the county for redistribution to townships by the county. All funds collected under these grants of authority are to be used for highway related purposes.

Information on the enactment, distribution, and repeal of county permissive motor vehicle license taxes are detailed in Chapter 20. CCAO has published *County Data Exchange* bulletins that address this permissive tax that is available on the CCAO web site at: <http://www.ccao.org/Publications/CountyDataExchange/tabid/232/language/en-US/Default.aspx>.

17.05 PERMISSIVE LODGING TAX

In 1967 municipalities and townships were given authority to levy a 3% lodging tax which could be used for any lawful municipal or township purpose (ORC 5739.08). No authority was given to counties to enact a county lodging tax until 1980. In this year counties, townships, and municipalities were given authority to levy a second 3% lodging tax, to be used primarily for convention and visitors' bureaus (ORC 5739.09).

Counties were given a window, until July 1, 1980, to exclusively enact the tax. After that date, if the county had not enacted the tax, any township or municipality could do so. If any township or municipality has enacted this second tax, the county then may not enact the tax countywide, but can enact the tax within those municipalities or townships that have not enacted this second tax.

If a township or municipality enacts this second tax, at least 50% of the revenue must be spent to make contributions to a convention and visitors' bureau. The balance may be used by the municipality or township for any lawful purpose. If a county enacts the tax, a uniform percentage, not to exceed 33.3%, must be distributed to any municipality or township which has not enacted the first 3% tax authorized in 1967 (ORC 5739.08) and if there are hotel or motel rooms in the township or municipality. Any remaining funds, after the distribution to eligible municipalities and townships, are then distributed to convention and visitors bureaus operating in the county. A township or municipality need not have the first 3% tax (ORC 5739.08) in place in order to enact the second 3% tax (ORC 5739.09).

Generally, the law provides that the maximum combined rate, when considering municipal, township and county taxes may not exceed 6%. Beginning in 1985, however, various special laws have been enacted allowing the combined tax rate to exceed this 6% limit. Presently, pursuant to these special provisions, certain counties have the following combined permissive lodging tax rates: Ashtabula County, 8%; Cuyahoga County, 7½%; Fairfield County, 7½%; Franklin County, 10%; Guernsey County, 9%; Hamilton County, 10½%; Lucas County 8%; Muskingum County, 8%; Ross County, 7¼%; Summit County 7½%, and Trumbull County, 7%. More information on these special taxes can be found in Chapter 21 of this *Handbook*.

There are no hearings or notices required for the lodging taxes; they are enacted by majority resolution; they are not subject to a referendum or other form of repeal except by commissioner's action. This tax is paid by operators of hotels, motels, rooming houses, and other facilities providing lodging accommodations for transient guests and that also pay the sales tax. In addition, local permissive lodging taxes may also be made to apply to facilities of fewer than five rooms such as bed and breakfasts that are not subject to the sales tax. In order for the tax to apply to such facilities, a resolution must be adopted by the commissioners (ORC 5739.09(G)).

For additional information on permissive lodging taxes refer to ORC Sections 505.56, 307.695, 351.021, 5739.08, 5739.09. Chapter 21 of this *Handbook* includes more detailed information about the permissive lodging taxes. In addition, the Department of Taxation has data available on this permissive tax at: http://tax.ohio.gov/divisions/tax_analysis/tax_data_series/sales_and_use/publications_tds_sales.stm.

17.06 PERMISSIVE UTILITIES SERVICE TAX

Any county may enact a utilities services tax for the purposes of providing additional general fund revenue and paying for the administration of the tax. The excise tax may be levied at a rate not to exceed 2% of the utility charge, except that customers engaged in business shall pay at a rate of 150% of the rate imposed on all other customers. The tax may be enacted and repealed by methods specified in ORC Chapter 324 but are not detailed here as no county has ever enacted this tax and many think there are practical and legal issues that may preclude its enactment.

17.07 PERMISSIVE LIQUOR AND CIGARETTE TAXES

The Ohio General Assembly, in 1986, authorized counties to levy a permissive tax of \$3.00 per gallon on liquor and of up to 4.5 cents per pack of cigarettes for the purpose of funding sports facilities. Then, in 1990, the General Assembly authorized counties to levy taxes on all alcoholic beverages to operate or service the debt of a sports facility operated by the county or a development corporation. The law allowed counties to levy a tax of up to 32 cents per gallon on wine and mixed beverages, 24 cents per gallon on cider, and 16 cents per gallon on beer.

Cuyahoga County voters approved the enactment of these permissive levies at the maximum rates effective August 1, 1990 with the revenue devoted to facilities used by the Cleveland Indians, Cavaliers and Browns.

Later, in 2006, the General Assembly authorized Cuyahoga County to levy an additional permissive cigarette tax of up to 30 cents per pack for the purpose of funding a regional arts and cultural district. Voters in Cuyahoga County approved this additional levy, effective February 1, 2007.

In 2008, the 127th General Assembly prohibited new local taxes on cigarettes and alcohol. The law grandfathered the current Cuyahoga County levies that are currently in effect, but when the current levies expire, Cuyahoga County will no longer have authority to ask the voters to continue these taxes. Currently the Cuyahoga County alcoholic beverage tax is scheduled to expire on July 31, 2014 and the sports facility cigarette tax is planned to expire on July 31, 2015. The Cuyahoga County regional arts and cultural district cigarette tax is scheduled to expire on January 31, 2017.

The Department of Taxation and the Division of Liquor Control administer the alcohol and cigarette taxes for the county. In the case of the alcohol taxes, the permissive taxes are collected through a local tax return filed with the state. All exemptions and credits allowed for the state taxes on alcoholic beverages apply to the county levies. In the case of the county permissive cigarette tax, collection is made through sales of tax indicia for cigarettes sold in Cuyahoga County. The taxes collected by the Department of Taxation are returned to Cuyahoga County in the month following collection. The Department retains 2% of the collections from the county beer and wine taxes for administrative expenses. For additional information see the following ORC Sections: 307.697, 351.26, 4301.421, 4301.424, 5743.021, 5743.024, 5743.321, and 5743.323.