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# HANDBOOK

Ohio County Commissioners

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## CHAPTER 18

# COUNTY PERMISSIVE SALES AND USE TAXES

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### INTRODUCTION

The county sales and use tax is currently the largest source of revenue for the General Fund in most counties. Although the state enacted its own sales and use taxes in 1934, counties did not receive this authority until 1967. At that time, the General Assembly granted counties the authority to enact a permissive sales and use tax at a maximum rate of 1/2 percent (0.5%). This amount applied in addition to the state rate. The new authority was part of a larger package of permissive local taxes that significantly changed the manner in which counties could fund the services they provide. These other permissive taxes included a permissive utilities service tax, a real property transfer tax and a permissive motor vehicle license tax.

In 1982, legislation increased the allowable maximum county rate to 1.0 percent. Four years later, the General Assembly added separate authority for an additional 0.5 percent. Currently, state law allows counties to enact a maximum combined sales and use tax rate of 1.5 percent, not including transit authority taxes. As of April 2019, 51 counties have the maximum rate, up from 39 counties in 2008.

State law also gives county transit authorities, with the consent of a board of county commissioners, the right to ask voters to approve a sales and use tax rate up to 1.5 percent, so that a county may have a combined maximum rate of 3 percent. As of January 2018, eight transit authorities have sales and use taxes, but no county has reached the combined maximum of 3 percent.

Other permissive county taxes will be discussed in other Chapters of this *Handbook*. For a general overview of permissive taxes, refer to Chapter 17. In addition, the following Chapters discuss other county permissive taxes in detail: Chapter 19, the *Permissive*

*Real and Manufactured Home Transfer Tax*; Chapter 20, the *Permissive Motor Vehicle License Tax*; and Chapter 21, the *Permissive Lodging Tax*.

The 1967 legislation created a basic structure for the enactment of permissive tax options by allowing commissioners to adopt a tax by resolution, but permitting voters to repeal the tax in a referendum within a specific period of time. The law, at the time, provided that county commissioners had the option to submit the resolution for voter approval in a referendum to be assured of public support. The permissive sales and use tax can be used for the general fund and a series of specific uses that will be explained in more detail in this Chapter. All of the taxes with the exception of the motor vehicle license tax are to be used for general fund purposes and for the administration of the tax.

Since the original enactment of the county permissive tax package, various changes have been made to the law, especially as it relates to the sales and use tax, which is a primary source of revenue for most counties. The county permissive sales and use tax law has undergone numerous changes concerning the rate of taxation, enactment and repeal options, and various other technicalities of the law.

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.

The balance of this Chapter will discuss the sales and use taxes and methods of implementation.

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## 18.1 PERMISSIVE SALES AND USE TAXES

Counties may enact a permissive sales and use tax of not more than 1.5 percent. Actually, there are two different authorities in this regard. There is the sales and use tax authorized pursuant to ORC Sections 5739.021 and 5741.021. For the purpose of this Chapter this tax is simply referred to as the *sales and use tax*. This tax may not exceed 1.0 percent, unless the county enacts a special tax for the construction or renovation of a jail. The other sales and use tax, which may be enacted at a rate of not more than 0.5 percent, is authorized by ORC Sections 5739.026 and 5741.023, and will be referred to as the *additional sales and use tax*.

In addition, county commissioners who have established a county transit board (ORC 306.01) or a regional transit authority (ORC 306.32) may also enact up to an additional 1.5 percent transit tax. All of these taxes will be explained in later sections of this Chapter. Table 18-4 contains the basic statutory references for permissive sales and use taxes, and Table 18-5 summarizes important information about these taxes.

Although counties must enact them together, the sales tax and the use tax legally remain two distinct taxes.

The county sales tax applies to retail sales and is collected by the vendor. The county use tax applies to the use, storage, or consumption of motor vehicles, watercraft, and outboard motors and is collected when the item is titled. The use tax also applies to tangible personal property and services purchased in another county in Ohio or in another state and brought back into Ohio. The use tax also applies to “remote” sales of goods and services such as purchases made by telephone or the internet from vendors located in other states when the vendor does not collect the tax.

County sales and use taxes apply to the same products and services as state sales and use taxes. When the state sales tax was first enacted in the 1930s, it applied only to tangible products. Over the years, the legislature has added specific services to the tax base (e.g., dry cleaning and landscaping). Sharing the same tax base as the state creates efficiency and improves compliance. The downside is that when the state exempts a product or service from taxation, the revenue loss affects counties as well. Every two years, the Ohio Department of Taxation prepares a list of tax exemptions as part of the governor’s budget proposal. A special legislative body created by House Bill 9 (131st General Assembly), the Tax Expenditure Review Committee, must evaluate the effectiveness of all of the state’s tax exemptions every eight years.

Federal policy can also affect the sales tax base in important ways. Historically, U.S. Supreme Court decisions prevented states from requiring sellers in remote sales transactions to collect sales taxes when the seller did not have a physical presence in the consumer’s state. As the amount of internet sales transactions grew in recent years, states and local governments lost billions of dollars of revenue. The Supreme Court’s 2018 decision in the *South Dakota v. Wayfair* case overturned these precedents and made it

possible for states to require most out-of-state vendors to collect sales taxes. Ohio passed implementing legislation in 2019 as part of the FY 2020-2021 operating budget (House Bill 166). The provision establishes an economic nexus standard identical to that used by South Dakota. Vendors that make \$100,000 in annual sales to Ohio customers or have 200 transactions in Ohio have liability to register and collect sales tax. "Remote" sales and Ohio's participation in the multi-state Streamlined Sales and Use Tax Agreement are discussed in Section 18.22 of this Chapter.

Revenue from remote vendor sales tax collection will be needed to offset another federal policy change that will substantially reduce revenue. In 1998, Congress passed the Internet Tax Freedom Act, which temporarily prohibited states from taxing internet access services. Ohio was one of seven states that was "grandfathered" under the law and allowed to continue collecting sales tax on business internet access services. The prohibition was made permanent by the Trade Facilitation and Enforcement Act of 2015. The grandfather clause expires on July 1, 2020, and will cost the state \$187 million in FY 2021. County and transit authority revenue losses can be expected to reach approximately \$40 million annually.

Another example of how federal law influences sales tax revenue can be found in the evolution of federal Medicaid policy. Federal policy has forced a series of pivotal changes in how the state assesses fees and taxes on health insuring corporations serving the public sector. These fees are used to supplement the amount of state matching funds derived from General Revenue taxes. From 2010 to 2017, the state applied the sales tax to Medicaid Managed Care Organizations in a way that benefitted counties. Sales tax was levied on the monthly capitation payments made managed care organizations. County permissive sales taxes applied to payments for Medicaid recipients residing in the county. When the federal government disallowed this practice, the state implemented a new fee structure that excluded counties and led to the loss of a \$166 million annual revenue stream. The Medicaid Managed Care Organization Sales Tax, and the temporary replacement funding provided in FY 2018-2019, are described in Section 18.21.

## **18.2 SALES AND USE TAX**

The allowable purposes of the permissive sales and use tax authorized by ORC Sections 5739.021 and 5741.021 are to provide additional monies for the general fund; to support criminal and administrative justice services; or, to fund a regional transportation improvement project. Commissioners are also permitted to use the revenue to administer the tax. County commissioners may reduce this tax to a lower authorized rate after its enactment and they may repeal the tax. Until September 2017, the tax could only be levied at the rates of 0.25 percent, 0.5 percent, 0.75 percent, or 1.0 percent. Subsequently, counties received additional authority to enact or change the tax in rates of one tenth of one percent (0.1%).

In the FY 2020-2021 operating budget (HB 166, 133<sup>rd</sup> G.A.), the legislature approved the use of 0.05 percent sales tax rate increments in addition to the current use of 0.1 percent and 0.25 percent. This change is effective October 1, 2019. The legislation also

authorized counties except charter counties to enact, with voter approval, a special tax for the construction or renovation of a jail. This special tax cannot exceed 0.5 percent. This authority is the only exception to the 1.5 percent limit on the county sales tax rate, and can only be used if a transit tax rate in a county does not reach 1.5 percent. This procedure is described in ORC sections 5739.021 and 5741.021, but will be discussed separately in Section 18.7 because of its special limitations.

The tax can be levied for a specified number of years or for a continuing period of time. Methods of enactment and repeal are discussed later in this Chapter. The enactment of the sales and use tax to support criminal and administrative justice services is discussed in Section 18.04 of this Chapter.

### **18.3 ENACTMENT OF ALL OR PART OF A SALES AND USE TAX TO SUPPORT CRIMINAL AND ADMINISTRATIVE JUSTICE SERVICES**

The resolution enacting or increasing the sales and use tax must specifically enumerate the purposes for which the revenue will be used, including whether some of the proceeds will be used for the administration of the tax. Commissioners can dedicate the proceeds of the tax exclusively to one of the following major purposes, or they can combine them:

1. To provide additional monies for the general fund;
2. To support criminal and administrative justice services;
3. To fund a regional transportation improvement project.

If a portion of the sales and use tax is to be used for additional general revenues and a portion is to be used to support criminal and administrative justice services, then the resolution must state the “rate or amount of the tax to be apportioned to each such purpose.” The rate or amount may be different in each year, but the rates or amounts must be adhered to in each year the tax is in effect. Rate means the percentage applied to the purchase price. Amount means some specified dollar amount. Commissioners have the flexibility to use either rates or amounts, and these rates or amounts may vary for each year the tax is in effect. Commissioners may enact the tax for a continuing period of time, but the resolution must still specify the rate or amount that will be used each year for the two purposes.

For example, a board of county commissioners could enact a 0.5 percent tax for the general fund and for criminal justice purposes and then specify in the resolution that 0.25 percent would be deposited in the general fund and 0.25 percent would be deposited in a special revenue fund to support criminal and administrative justice services.

Alternatively, a board of county commissioners could enact a 0.5 percent tax for both purposes and specify a certain dollar amount for the county general fund and any amount in excess of the previously specified dollar amount to be credited to a special

fund to support criminal and administrative justice services. The options are virtually unlimited as to how the proceeds from the tax may be divided between the two purposes.

Counties should note that the law provides that commissioners must specify the “rate or amount” if the tax is to be used for both purposes. This is different than the language that is used in the *additional sales and use tax* (ORC 5739.026) law where that tax may be used for multiple authorized purposes. The language in the additional sales and use tax law provides that the commissioners must specify the “amount or proportion” if the tax is to be used for more than one purpose. This is a significant difference because under the *additional sales and use tax* the commissioners could specify, for example, that 80 percent of the proceeds could be used for one of the authorized purposes and 20 percent could be used for another authorized purpose. The language in the sales and use tax law (ORC 5739.021) does not allow this type of percentage allocation.

Following are two examples of how a sales and use tax (ORC 5739.021) enacted for both additional general revenues and to support criminal and administrative justice services could be apportioned between the two authorized purposes.

**Example # 1 – A 1% TAX FOR A PERIOD OF 10 YEARS**

YEAR #	RATE TO GENERAL FUND	RATE TO CRIMINAL & ADMINISTRATIVE JUSTICE SERVICES
1	½%	½%
2	½%	½%
3	½%	½%
4	¼%	¾%
5	¼%	¾%
6	¼%	¾%
7	¼%	¾%
8	¼%	¾%
9	0%	1%
10	0%	1%

**Example # 2 – A 1% TAX FOR A PERIOD OF 10 YEARS**

YEAR #	AMOUNT TO CRIMINAL & ADMINISTRATIVE JUSTICE SERVICE	AMOUNT TO GENERAL FUND
1	First \$500,000	Any amount over \$500,000
2	First \$500,000	Any amount over \$500,000
3	First \$500,000	Any amount over \$500,000
4	First \$600,000	Any amount over \$600,000
5	First \$600,000	Any amount over \$600,000
6	First \$750,000	Any amount over \$750,000
7	First \$750,000	Any amount over \$750,000

8	First \$750,000	Any amount over \$750,000
9	First \$750,000	Any amount over \$750,000
10	First \$750,000	Any amount over \$750,000

Any county enacting all or any portion of the *sales and use tax* for criminal and administrative justice services may use the funds for any or all of the following purposes:

1. The exercise of all powers and duties of the sheriff.
2. The exercise of all powers and duties of the prosecutor.
3. The exercise of all powers and duties vested in any court in the county.
4. The exercise by any clerk of a municipal court with countywide jurisdiction, the clerk of any county court, and the clerk of the court of common pleas of all powers and duties vested in the clerk, except, in the case of the clerk of the court of common pleas, the title bureau.
5. The exercise of all powers and duties of the coroner.
6. Payments to other public agencies and private non-profit agencies if the purpose of the agency includes diversion, adjudication, detention, or rehabilitation of criminal or juvenile offenders. The operation and maintenance of a detention facility as defined in ORC Section 2921.01.
7. The construction, acquisition, equipping or repair of a detention facility, including debt service.

The statutory definition of criminal and administrative justice services does not include public defenders or indigent defense costs. These costs are not permissible expenses unless the prosecutor rules that indigent defense costs are allowable under the provision of law allowing the funds to be used by any court in the county. Under this scenario, the commissioners would include assigned counsel costs within the budgets of the various courts and not as a separate line item apart from the court budget.

**Statement or Preliminary Plan for Criminal and Administrative Justice**

Any county proposing to enact all or a portion of a *sales and use tax* for criminal and administrative justice services must prepare a statement and preliminary plan for the use of the funds. The statement and preliminary plan must be available at the first public hearing on the proposed tax. The written document must contain the following information:

1. A statement of the amount of expenditures made from the general fund for criminal and administrative justice services for last two fiscal years.



2. A statement that estimates the amount of expenditures from the general fund that will be made during the current fiscal year for criminal and administrative justice services.
3. A preliminary plan for each of the next two years after the resolution is adopted showing the amount of monies from the general fund that will be used for criminal and administrative justice services. This preliminary plan must show the proposed expenditures from the general fund both ways, first assuming the proposed tax is imposed, and second, assuming the tax is not imposed.
4. A preliminary plan for each of the next two years after the resolution is adopted showing the amount of monies that will be used for criminal and administrative justice services from the special revenue fund if the proposed tax is imposed.

At the end of the Chapter, Table 18-6 provides a model format for preparing the required statement and preliminary plan. Commissioners are urged to work with the auditor and prosecutor in preparing the statement and preliminary plan. The statement and preliminary plan should be adopted by resolution.

The statement and preliminary plan must be prepared using the best information available when it is prepared. The law also provides that neither the statement nor the preliminary plan can be used as a basis to challenge the validity of the tax in court. The statement and preliminary plan do not limit the authority of the commissioners subsequently to appropriate an amount different from that specified in the preliminary plan. See Table 18-6 for a model template of a preliminary plan.

#### **18.4 SALES AND USE TAX TO SUPPORT A REGIONAL TRANSPORTATION IMPROVEMENT PROJECT**

Part or all of the sales and use tax may be enacted to support the costs of a regional transportation improvement project. A regional transportation improvement project is created by two or more counties that sign a cooperative agreement and create a governing board for the project. Each member county must pass a resolution to establish the board. The governing board is a public body for the purposes of Ohio law and has a distinct legal and corporate identity from the counties that created it. Pledges of sales tax revenue and other revenue sources may be through periodic or one-time fixed payments, in variable installments based on increases in tax revenue attributable to project activities, or through any other means negotiated by the county and the governing board. In order to be reimbursed for administrative expenses of the board, however, a county must receive the prior approval of the Director of the Ohio Department of Transportation. The Director may approve individual line items or an aggregate amount over a period of time not exceeding 12 months. For further information about the requirements of a regional transportation improvement project, please consult ORC Sections 5595.01 to 5595.13.

## **18.5 SALES AND USE TAX ENACTMENT OPTIONS**

There are four options available to commissioners in enacting the sales and use tax (ORC 5739.021):

1. **REGULAR METHOD** - This method involves the adoption of a resolution by the commissioners and is subject to referendum. For 30 days following adoption of the resolution, a referendum can be requested by the submission of a valid petition with the required number of signatures from registered voters. If a referendum is requested the tax cannot go into effect until approved by the electors at the next primary or general election. If a referendum is not requested during this 30-day period, the tax is not subject to a referendum or an initiative petition to repeal in the future.
2. **EMERGENCY METHOD** - This method involves the adoption of a resolution by the commissioners as an emergency measure. Such a resolution is not subject to a referendum, but is subject to an initiative or an election to repeal at any subsequent general election. The commissioners must act unanimously and must state the reasons for the emergency.
3. **ELECTORATE METHOD** - This method allows county commissioners to adopt a resolution directing the board of elections to submit the question to the electors at the next general or primary election. This resolution must be adopted and certified to the board of elections at least 90 days before the election.
4. **EMERGENCY/ELECTORATE METHOD** - This method allows the commissioners to adopt the sales tax resolution as an emergency as specified above, and at the same time direct the board of elections to submit the question of the tax or the increase of the tax to the electors at the next general election. Where a tax has been enacted by this method and approved by the electors, the tax is subject to an initiative petition to repeal at any subsequent general election. The question on the ballot at the general election is whether the tax will be retained.

Note that the special tax for jail construction or renovation described in Section 18.7 below requires voter approval in all cases, and the resolution placing the measure on the ballot cannot be adopted as an emergency measure.

## **18.6 LIMITATIONS ON EMERGENCY ENACTMENT**

There is one significant limitation placed upon county commissioners' authority to enact the *sales and use tax* as an emergency measure. The enactment of the *sales and use tax* as an emergency is not allowed in the following situations:

1. If a tax was rejected at an election held as a result of a referendum petition, then emergency enactment is not possible for at least one year after the date of the previous election.

2. If an emergency tax enacted after January 1, 1982, has been repealed as a result of an initiative petition or because the county commissioners enacted the tax as an emergency measure and directed the board of elections to submit it to the voters at the next general election, then the commissioners cannot enact the tax as an emergency for at least one year after the previous election.

It should be noted that this limitation only applies to the 1 percent *sales and use tax* (ORC 5739.021) and not to the *additional sales and use tax* (ORC 5739.026). This means that the *additional sales and use tax* can be enacted as an emergency for general fund purposes at any time, because the restriction only applies to the ORC Section 5739.021 tax.

In addition, the one-year restriction does not prohibit the commissioners from placing either the *sales and use tax* or the *additional sales and use tax* on the ballot or enacting either tax subject to a referendum. Finally, where the *sales and use tax* has been submitted to the electors and rejected, the one-year restriction against an emergency enactment does not apply.

## **18.7 SPECIAL SALES AND USE TAX FOR JAIL CONSTRUCTION**

Starting October 1, 2019, the law allows counties that are not charter counties to enact a special tax for the construction or renovation of a detention center under ORC 5739.021. This is the only method by which a total sales tax rate enacted by a county board of commissioners may exceed 1.5 percent. This option is only available if the transit authority in the county has not used all of its allotted 1.5 percent sales tax rate authority. The rate for this special tax cannot exceed 0.5 percent and must be lower if the transit authority sales tax rate exceeds 1.0 percent. In other words, the sum of the transit authority tax rate and special detention center rate cannot exceed 1.5 percent.

The law allows the tax to be used “exclusively for the construction, acquisition, equipping, or repair of a detention facility in the county.” Funds may be used for debt service for securities issued under ORC Chapter 133. Revenues from the tax must be placed in a special fund in the county treasury. The tax cannot be used to pay for operating expenses.

The resolution proposing the adoption of the tax cannot be adopted as an emergency measure and must propose submission of the tax for voter approval. The standard procedures for adoption of the resolution continue to apply, including the requirement to conduct two public hearings with proper notice in a newspaper or with a second notice as allowed by ORC Section 7.16. Because this purpose falls within the category of “criminal and administrative justice services,” it requires the presentation of a statement of prior expenditures and preliminary spending plan at the first public hearing, as explained above.

## 18.8 ADDITIONAL SALES AND USE TAX

In addition to the *sales and use taxes* described in Section 18.03, counties may enact an *additional sales and use tax* up to 0.5 percent pursuant to ORC Section 5739.026. The rate may be levied as a multiple of one twentieth, one tenth, or one fourth of one percent (.05%, 0.1% or 0.25%). This additional authority gives commissioners the authority to enact a total combined sales and use tax rate up to 1.5 percent, unless the county enacts a special tax for the construction or renovation of a detention center.

The additional sales and use tax can be levied for a specified number of years or for a continuing period of time. If the tax is levied exclusively for the general fund, county commissioners may reduce this tax to a lower authorized rate (i.e. reduction from 0.5 percent to 0.25 percent), and may repeal the entire tax. The additional sales and use tax may be used for one or more of the following specific purposes:

1. To provide revenue for bonds or notes issued by a convention facilities authority and to provide operating revenues for the authority. For more information on the establishment of a convention facilities authority refer to Section 18.20.
2. To provide revenues for a county transit board or regional transit authority.
3. To provide additional revenue for the county general fund.
4. To provide revenues for permanent improvements distributed by a community improvements board and to retire bonds for such improvements. For more information on the establishment of a community improvements board refer to Section 18.21.
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. County commissioners of a county that is joined in a joint recreation district may levy the *additional sales and use tax* under ORC Section 5739.026 (A) (5) and under the provisions of the uniform bond law (ORC 133.07(C)(15)) and the joint recreation district law (ORC 755.171) for the purpose of repaying debt issued to finance the construction of joint recreation district facilities.
6. To provide revenue for the implementation and operation of a 911 phone system.
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 major league sports facility. This authority involves the reduction of a transit authority tax that is greater than 0.5 percent by not more than 0.1 percent and its replacement at a 0.1 percent rate for construction or renovation of the sports facility. Revenue from the tax cannot

exceed \$4.5 million annually. The reduction of the transit tax to pay for a sports facility must be approved by voters (see ORC Section 5739.028).

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.
11. To provide for the operation of a lake facilities authority or the remediation of a watershed by a lake facilities authority under ORC Chapter 353.
12. To provide additional revenue for a regional transportation improvement project.

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. It should be noted that the change in the allocation methodology was originally intended to apply to when an additional sales and use tax was enacted pursuant to ORC Section 5739.026 (A)(5) that allows for the enactment of the tax for distribution by a community improvements board. The language, however, may apply in other situations. Guidance from the prosecutor in these cases may be needed.

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, permanent improvements, agricultural easements, or for regional transit purposes.

Provisions for the enactment and repeal of the *additional sales and use taxes* will be discussed later in this Chapter.

## **18.9 SPECIAL PROVISIONS FOR ADDITIONAL SALES AND USE TAX FOR 911**

Commissioners may enact all or part of the *additional sales and use tax* for the implementation and operation of a 911 phone system. The following guidelines apply to the use of this tax for 911 purposes:

If the tax is enacted exclusively for the purpose of 911, it may not be levied for more than five years.

The revenues derived from a tax enacted exclusively for 911 must be deposited in a special fund. At the end of the five-year period, any monies remaining can only be used for 911 purposes and cannot be transferred to another fund. The commissioners also may not petition the court of common pleas to transfer any remaining funds, and the tax commissioner may not approve any such transfer request.

If the commissioners want to levy the tax for 911 for more than five years, it must be enacted in conjunction with one or more of the nine other authorized purposes for which the *additional sales and use tax* may be enacted. The commissioners must also prescribe the method by which it will allocate the tax among the eligible purposes for each year the tax is collected.

In all cases where any part of the *additional sales and use tax* is to be levied for 911, the tax must be submitted to the electors for approval.

### **18.10 ADDITIONAL SALES AND USE TAX ENACTMENT OPTIONS**

The additional sales and use tax specifies certain procedures for enactment depending on the intended purpose(s) for which the tax must be used. If the tax is to be *exclusively* for the general fund, then commissioners can adopt the tax by resolution after conducting two public hearings on the proposal. The resolution is subject to a referendum if voters gather enough signatures. Alternatively, the commissioners may submit the tax for the approval of the voters. The resolution must then specify the date of the election, which must be at least 90 days after certification of resolution to the board of elections. The election may be a special election but it cannot occur in August of any year.

Also, if the tax is exclusively for the general fund, commissioners may hold two hearings and then adopt the resolution as an emergency measure with a unanimous vote. An emergency resolution may be submitted to the voters subject to the same specifications as to the date of the election as a regular resolution.

If the tax is used for any other purpose besides the general fund, or if two or more purposes are combined, then voter approval is always required. This is case even if the general fund is one of the purposes. In the case of a lake facilities authority or a sports facility, the election procedures are spelled out in their respective sections of the Revised Code.<sup>1</sup>

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<sup>1</sup> The procedures for the partial replacement of a transit tax with a sports facility tax are set forth in ORC Section 5739.028). A Lake Facilities Authority must obtain voter approval in order to issue securities for the remediation of an impacted watershed and directly related permanent improvements. The net indebtedness incurred by a lake facilities authority pursuant to this division may not exceed one-tenth of one per cent of the total value of all property within the territory comprising the impacted lake district as listed and assessed for taxation (ORC 353.03).

**Table 18-1 Enactment Procedures for the Additional Sales Tax**

Purpose	Enactment Procedure
Exclusively for the General Fund	(1) Resolution, incl. Emergency Resolution or (2) Submission to Voters
Exclusively for: Convention Facilities Authority Transit Authority Community Improvements Board Permanent Improvements 9-1-1 System Detention Facility Agricultural Easements Emergency Medical Services Regional Transportation Improvement Project	Mandatory Submission to the Voters
More than one purpose (with or without the General Fund)	Mandatory Submission to the Voters

**18.11 PUBLIC HEARINGS AND NOTICE REQUIREMENTS**

Public hearings and notices are generally required when enacting the permissive sales and use tax with a few exceptions that will be explained later in this section. The following public hearing and notice requirements generally apply to both permissive sales and use taxes.

Two public hearings must be held before the adoption of the tax resolution.

The second hearing must be no less than three nor more than 10 days after the first hearing.

Notice of the date, time, and place of the hearings must be published in a newspaper of general circulation in the county once a week, on the same day of the week, for two consecutive weeks prior to the hearing. The second notice must be no less than 10 or more than 30 days before the hearing.

In lieu of providing two full published notices, the law (ORC 7.16) permits the use of one full public notice and a second abbreviated public notice, provided the first notice is published on the state public notice website and other requirements of this section are met. For additional information, refer to [County Advisory Bulletin 2012-01](#) Public Notice Reform.

However, it should be noted that if the *additional sales and use tax* is being enacted exclusively for general fund purposes, public hearings and notice requirements apply. If,

however, the *additional sales and use tax* is being proposed for any of the other authorized purposes which necessitate the submission of the question to the voters, hearings and notice are not required. It should be stressed that public hearings are required when the *additional sales and use tax* (ORC 5739.026) is being proposed exclusively for the general fund even if the commissioners are placing the question on the ballot. The *sales and use tax* (ORC 5739.021) must always follow the hearing and notice requirements.

## **18.12 EFFECTIVE DATES AND NOTIFICATION FOR SALES AND USE TAXES**

The effective date of any change in the *sales and use tax* or the *additional sales and use tax* is always the first day of a calendar quarter 65 days after the tax commissioner has been notified by the county commissioners or the board of elections of adoption of the tax. A county sales and use tax may only take effect on the first day of January, April, July, and October. The purpose of the extended advance notice is to give the tax commissioner time to notify vendors and to harmonize Ohio law with the provisions of the Streamlined Sales Tax Agreement that generally requires sales taxes in each participating state to conform to certain guidelines.

The tax commissioner must be notified in writing by the county commissioners of all sales tax questions which are submitted to the voters at the same time that the question is certified to the board of elections.

If a sales tax is enacted by the regular method, the tax becomes effective no sooner than the first day of the calendar quarter after the tax commissioner has been notified by personal service or certified mail. If a referendum petition is filed, the county auditor must notify the county commissioners and the tax commissioner within five days by certified mail. If the auditor then declares the petition invalid, notice must again be sent by certified mail to both parties. If the auditor invalidates a referendum petition, the tax then takes effect on the first day of the calendar quarter 65 days after the auditor declares the petition invalid.

If the sales tax is enacted as an emergency, the tax goes into effect on the first day of the calendar quarter not later than 65 days after the county commissioners have delivered a certified copy of the resolution to the tax commissioner. If an election to repeal a tax enacted as an emergency is initiated, the board of elections must notify the tax commissioner when it is determined that the petition is valid. If the tax is repealed, the board of elections must notify the county commissioners and the tax commissioner immediately after the result has been declared. The tax is repealed or the increased rate of the tax is reduced on the first day of the calendar quarter 65 days after the tax commissioner and the county commissioners have been notified. This is April 1 of the following year.

If the sales tax is submitted to the electors, the commissioners must notify the tax commissioner in writing that the tax will be submitted to the electors when they transmit the resolution enacting the tax to the board of elections. If the tax is approved by the



electors, the board of elections then notifies the tax commissioner, and the tax is effective on the first day of the calendar quarter 65 days after the tax commissioner has been notified of the vote.

If the tax is enacted as an emergency and at the same time the commissioners direct the board of elections to place the issue on the ballot at the next general election, the commissioners must notify the tax commissioner of the emergency enactment, and the tax then goes into effect on the first day of the calendar quarter 65 days after the tax commissioner is notified. The commissioners must also notify the tax commissioner of the sales tax question when they transmit the resolution to the board of elections directing that the question be voted on at the next general election. The board of elections must immediately notify the county commissioners and the tax commissioner of the result of the election. If the tax is repealed or reduced the repeal or reduced rate takes effect on the first day of the calendar quarter 65 days after the tax commissioner and county commissioners are notified. This is April 1 of the following year.

### **18.13 REMOVAL OF PERMISSIVE SALES & USE TAXES**

There are four separate ways by which both permissive sales and use taxes may be removed or repealed.

1. The county commissioners may repeal the taxes.
2. If the permissive tax is enacted by the regular method, a petition for referendum can be filed within 30 days of adopting the permissive tax resolution. In the case where the *sales and use tax* (ORC 5739.021) was rejected at any election irrespective of method of enactment during the preceding year, petitioners have a 45-day period to submit the petition. It must be stressed that this 45-day provision does not apply to the additional sales and use tax (ORC 5739.026). If a valid petition is filed, the tax does not become effective unless approved by the electorate.
3. If the permissive tax was adopted as an emergency, it is not subject to referendum. An election to repeal, however, can be initiated in any subsequent year by filing a petition 90 days before the general election. The petition must be signed by at least 10 percent of those voting for governor at the most recent gubernatorial election (see ORC 5739.022).
4. If the permissive tax is enacted as an emergency and at the same time the commissioners direct the board of elections to submit the tax to the electors at the next general election, the electors then vote to retain the tax that was previously adopted as an emergency.

## **18.14 REFERENDUM AFTER ENACTMENT UNDER THE REGULAR METHOD**

After the adoption of a resolution enacting a permissive tax under the regular method described above, it does not become effective for a 30 day period. During that period, a referendum petition may be circulated requesting the resolution be submitted to the electors. Such questions can be submitted to the voters at either a general or primary election. The procedures for filing the referendum petition are governed by ORC Sections 305.31-305.41, and the petition must also comply with requirements specified in ORC Section 3501.38.

The petition must be signed by 10 percent of those that voted for the Governor in the most recent gubernatorial election. The text of the petition for a referendum must request that the resolution levying the permissive tax be submitted to the electors of the county for their approval or rejection.

The petition must be filed with the county auditor within 30 days after the adoption of the resolution by the commissioners. After a petition has been filed with the county auditor it must be kept open for public inspection for 10 days.

Prior to circulating a referendum petition, those seeking the referendum must file a certified copy of the permissive tax resolution with the county auditor and with the county board of elections. The board of county commissioners must make a certified copy of the resolution available as soon as the resolution is adopted. A certified copy includes a written statement attesting that it is a true and exact reproduction of the original resolution and is usually attested to by the commissioners' clerk. Commissioners may charge a fee for the cost of copying the resolution.

Those petitioning for a referendum may designate a committee of not less than three persons who is considered as filing the petition. The circulator of a referendum petition also must, within five days after the petition is filed with the county auditor, file a statement with the county auditor, made under penalty of election falsification, showing:

1. All moneys or things of value paid, given, or promised for circulating the petition;
2. Full names and addresses of all persons to whom such payments or promises were made;
3. Full names and addresses of all persons who contributed anything of value to be used in circulating the petitions;
4. Time spent and salaries earned while circulating or soliciting petition signatures by persons who were regular salaried employees of a person who authorized them to solicit signatures or circulate the petition as a part of their regular duties.

This statement is open to public inspection for a period of one year.

After the conclusion of the 10-day public inspection period, the county auditor transmits the petition and a certified copy of the permissive tax resolution to the board of elections. This transmittal must be not later than the 90<sup>th</sup> day before the election. The board of elections examines all signatures on the petition to determine the number of electors of the county who signed the petition. The board of elections returns the petition to the county auditor within 10 days with a statement attesting to the number of electors who signed the petition.

The board of elections then submits the resolution to the electors of the county, for their approval or rejection, at the next general election held in the county in any year, or on the day of the next primary election in even-numbered years that occurs 90 days after the county auditor certifies the sufficiency and validity of the petition to the board of elections.

Permissive sales and use tax resolutions receiving an affirmative majority vote become effective on the first day of the calendar quarter after the expiration of 65 days from the date the tax commissioner received notice from the board of elections of the affirmative vote.

## **18.15 OTHER PROVISIONS RELATING TO PETITIONS**

The law specifies a series of other requirements relating to referendum petitions, including:

1. Each signer must be a registered elector of the county in which the election is to be held. The facts of qualification shall be determined as of the date when the petition is filed. The signer must include the date of signing and the location of the signer's voting residence on the petition after the signer's name. The location must include the street and number if in a municipal corporation or the rural route number, post office address, or township if outside a municipal corporation. The voting address given must be the address shown on voting registration records at the board of elections.
2. Signatures must be in ink. A signer may also print his/her name in addition to signing in order to clearly identify the signature. No person can write a name other than his or her own name nor may anyone authorize another to sign on his or her own behalf. The procedure for an "attorney-in-fact" signing for disabled voters is an exception to this prohibition as specified in ORC Section 3501.382. If a petition contains the same elector's signature more than once only the first signature is counted.
3. A referendum petition may be presented in separate petition papers, but each petition paper must contain a full and correct copy of the title and text of the resolution enacting the permissive tax. All separate petition papers must be filed at the same time, as one instrument.

4. At the top of each part of the petition the following words must be printed in red:

**NOTICE**

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

5. No person can knowingly sign a referendum petition more than once, sign a name other than his or her own, or sign when not a legal voter. The procedure for an "attorney-in-fact" signing for disabled voters is an exception to this prohibition as specified in ORC Section 3501.382.
6. No person can accept anything of value for signing a referendum petition.
7. No person can, directly or indirectly, by intimidation or threats, influence or seek to influence any person to sign or abstain from signing, or to solicit signatures to or abstain from soliciting signatures to a referendum petition.
8. On each petition paper the circulator must indicate the number of signatures contained thereon and must sign a statement made under penalty of election falsification that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be or of an attorney-in-fact acting for a disabled voter pursuant to ORC Section 3501.382.
9. The circulator of a petition may, before filing it with the county auditor, strike from it any signature he does not wish to present as a part of his petition.
10. Any signer of a petition or an "attorney-in-fact" acting on behalf of a disabled voter pursuant to ORC Section 3501.382 may remove his or her signature from a petition at any time before the petition is filed with the county auditor by striking his name on the petition. No signature, however, may be removed after the petition is filed with the county auditor. Likewise, no alterations, corrections, or additions may be made to the petition after it is filed with the county auditor.
11. The petition papers must contain the following statement in bold face capital letters:  
  
**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.**
12. If a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that entire petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected but shall not invalidate the other valid signatures

on the paper. The procedure for an “attorney-in-fact” signing for disabled voters is an exception to this prohibition as specified in ORC Section 3501.382.

### **18.16 ELECTION TO REPEAL EMERGENCY PERMISSIVE TAX**

To initiate the repeal of either of the county permissive sales and use taxes enacted as an emergency measure, a petition must be filed with the board of elections 90 days before a general election in any year (ORC 5739.022). The petition must be signed by 10 percent of those voting for Governor in the last gubernatorial election. The petition requirements are the same as for a referendum petition as specified in Sections 18.12 and 18.13 of this Chapter.

If the petitions are valid, the board of elections must submit the question to the voters at the next general election. Notice of the election must be published in a newspaper of general circulation in the county at least once a week for two consecutive weeks before the election.

As an alternative to these publication requirements, the county may use the procedures specified in ORC Section 7.16. Under this procedure, an abbreviated second publication may be made if the first notice is posted on the state public notice website and other requirements of this section are met. For additional information, refer to [County Advisory Bulletin 2012-01](#) which is available at the CCAO website at [www.ccao.org](http://www.ccao.org).

If the tax is repealed at such an election, it will be collected until April 1 of the following year. The question that appears on the ballot is whether the tax will be retained.

### **18.17 INSIDE MILLAGE ROLLBACK**

In conjunction with the enactment of a *sales and use tax* or an *additional sales and use tax*, or at any time after the county commissioners have adopted a resolution to levy or increase the rate of a sales tax, the county commissioners may adopt a resolution reducing inside property tax millage (ORC 5705.313).

When this authority was originally enacted, the amount of the reduction had to equal one-half of the revenue that would have been generated from a 0.5 percent tax. The law also originally required the commissioners to adopt the resolution reducing the inside millage in conjunction with the resolution to levy or increase the rate of the sales tax. The law now authorizes commissioners to reduce any number of mills as long as the reduction does not exceed the estimated amount that the sales tax increase will yield. The commissioners may adopt a resolution at any time reducing the inside millage for any year or years that the sales tax is in effect.

No other taxing unit may levy any portion of the reduced millage, except as may be required by the budget commission to provide for the payment of debt charges of a subdivision or taxing unit. The county commissioners may, at any time, reimpose the

millage that had been reduced. The resolution reducing the millage may specify the number of years the reduction will be in effect.

## **18.18 THE REGIONAL TRANSIT PERMISSIVE SALES AND USE TAX**

County commissioners and regional transit authorities were granted the power to enact permissive sales and use taxes for transit purposes in 1974. This permissive tax differs from other permissive sales taxes in the following respects:

The taxing authority may be either the county commissioners for a county transit board or the board of trustees of a regional transit authority.

The levy does not go into effect until it is submitted to the electors residing within the county or within the territorial boundaries of the transit authority.

The tax may be levied at the rate that is a multiple of one fourth, one tenth, or one twentieth of one percent, up to 1.5 percent, unless the county has enacted a sales and use tax for jail construction or renovation under ORC 5939.021. In that case, the combined rates of the transit tax and the jail tax cannot exceed 1.5 percent. A certified copy of the resolution of the taxing authority must be delivered to the board of elections not later than the 90<sup>th</sup> day before the election at which it is to be voted upon. The resolution must specify the number of years which the tax will be in effect or that the tax is for a continuing period of time. The question may be submitted at a general election or at a special election on a day specified in the resolution.

Notice of the election must be published in one or more newspapers which in the aggregate are of general circulation in the territory of the county or of the regional transit authority once a week for two consecutive weeks prior to the election or as provided in ORC Section 7.16. If the board of elections maintains a website, notice of the election must be posted on the website for 30 days prior to the election. The notice must state the type, rate and purpose of the tax to be levied, the length of time and place of the election.

If the tax is levied for a continuing period of time, a proposal to decrease the rate of tax may be initiated by filing a petition with the appropriate board of elections prior to the 90<sup>th</sup> day before any general election. The petition must state the amount of the proposed decrease in the rate and must be signed by at least 10 percent of the number of qualified electors residing in the area who voted at the last general election.

Finally, special procedures apply when a county, township, or municipality is added to the jurisdiction of a regional transit authority that already has a transit sales and use tax in effect. While the process is complex, the jurisdictions being added to the authority will have the sales tax imposed unless a referendum is initiated within 60 days over the question of inclusion in the regional transit authority. Another option is to have an automatic election over the entire territory of the expanded transit authority where the question of the renewal of an existing tax, the increase of an existing tax, the renewal

and increase or decrease of an existing tax or the imposition of an additional tax will appear on the ballot.

These procedures are complex and will not be detailed in this Chapter. For additional information refer to Chapter 34 of this *Handbook* and read ORC Sections 306.32, 306.321, 306.70, 307.71, 5739.023 and 5741.022 with great care.

## **18.19 COLLECTION AND DISTRIBUTION OF THE TAX**

The tax commissioner is responsible for administering the collection and distribution of the sales and use tax for the state, counties, and transit authorities. The state sales and use tax rate of 5.75 percent is collected with any county or transit authority permissive tax.

The filing payment date depends partly on the type of taxpayer and partly on the dollar amount of the tax payment due. For example, the clerk of courts makes weekly payments on Monday for taxes collected during the preceding week on the sale of motor vehicles, watercraft and outboard motors. The sales tax collected on the sale of spiritous liquor at state contracted liquor agency stores is paid on a semi-monthly basis. Taxpayers required to file monthly returns must pay by the 23<sup>rd</sup> day of the month following the close of the reporting period, which is the previous month. Taxpayers whose annual liability exceeds \$75,000 are required to pay by electronic funds transfer (EFT) and also are required to make accelerated payments during each month. Taxpayers with less than \$1200 of tax liability for a six month period may be authorized to file semi-annual payments on the 23<sup>rd</sup> day of the month following the close of each semi-annual period.

Vendors who make timely payment of their sales tax liability are entitled to a vendor discount equivalent to 0.75 percent of the amount due. For example, if a vendor's tax liability is \$1000 for the previous month, then the vendor would retain \$7.50 of the amount due as a discount for timely payment of the tax liability (ORC 5739.12, 5741.12).

Prior to the distribution of a county or transit authority permissive sales and use tax, the department of taxation credits one percent of the amount collected to the Local Sales Tax Administrative Fund for the use of the tax commissioner in defraying administrative costs. Ninety-nine percent of the revenue is distributed to the general fund or special revenue fund of the county or the general fund of the transit authority that levied the tax.

Most sales and use tax revenue is attributable to monthly filers who file their tax returns with the department by the 23<sup>rd</sup> day of the month following payment of the tax. Due to the time required to process tax returns and identify the proper tax amounts for each county and transit authority, the revenue from monthly collections is distributed to the counties and regional transit authorities in the second month following the collection month. For example, this means that sales made in January are reflected in February collections, which are distributed as revenue to counties and transit authorities in April.

## OVERPAYMENTS AND REFUNDS

The law requires the tax commissioner to refund to any vendor or consumer the full amount of any illegal or erroneous taxes paid to either the treasurer of state or to the tax commissioner (ORC 5739.07). An application for refund must be filed within four years of the illegal or erroneous payment of the tax, unless the vendor or consumer waives the time limitation in which case the application period is extended by the same period as the waiver. ORC Section 5739.072 allows the tax commissioner to apply a refund to a taxpayer's outstanding tax debt. If the refund amount exceeds the debt, the balance will be refunded. If the refund amount is less than the debt, the entire refund amount may be applied to the debt.

The law establishes application refund procedures (ORC 5739.07). If the tax commissioner determines that the amount of the refund to which the applicant is entitled is less than the amount claimed in the application, the law provides the applicant, within 60 days from the date of mailed notice to provide additional information or request a hearing, or both. If the applicant does not request a hearing or provide additional information, then the tax commissioner's determination becomes final. The tax commissioner's determination may be appealed to the state board of tax appeals (ORC 5717.02).

Refunds are paid from the Tax Refund Fund created by ORC Section 5703.052. The tax commissioner certifies the amount of a refund to the state treasurer and then the certified amount is taken from the current receipts of the same tax source from which the refund is to be paid. If the current receipts from that tax source are inadequate for the purpose of covering the refund, then the refund amount is transferred from the current receipts of the state sales tax. When the state treasurer provides a refund of a tax not levied by the state, for example a county sales tax, then the tax commissioner is to recover that amount from the next distribution of that tax to the county or transit authority. If the refund exceeds 25 percent of the next distribution of the tax, the tax commissioner may spread the recovery over a period of no more than 36 months.

State law requires the payment of interest on any sales tax refund effective from the date of the overpayment (ORC 5739.132). The tax commissioner is required to determine the annual certified interest rate by October 15 of each year for the following calendar year. The interest rate is calculated by adding 3 percent to the federal short-term rate rounded to the nearest percentage point that was in effect during July of the current year (ORC 5703.47).

### **18.20 ESTABLISHMENT OF A CONVENTION FACILITIES AUTHORITY**

If all or any part of an *additional sales and use tax* is to be used for convention facilities, the county commissioners must first establish a convention facilities authority under ORC Section 351.02. In this situation, these funds are outside the direct control of county commissioners.



The composition of the convention facilities authority is as follows:

Six directors are appointed by the commissioners. One of these members must represent townships; one representing a major business trade association; and one representing the convention and visitors bureau. No more than three may be of the same political party.

Three directors appointed by the mayor or chief executive of the most populous municipality with the approval of the municipal legislative authority. No more than two of these members may be of the same political party.

Two directors appointed by agreement of the mayors or chief executives of the remaining municipalities in the county and of different political parties. Although the convention facilities authority must be established prior to adoption of the resolution enacting the tax, original appointments need not be made for 30 days. Terms must be initially staggered, but thereafter terms are for a period of four years.

#### **18.21 ESTABLISHMENT OF A COMMUNITY IMPROVEMENTS BOARD**

If all or any part of an *additional sales and use tax* is to be used for permanent improvements under the jurisdiction of a community improvements board, the county commissioners must first establish the board pursuant to ORC Section 307.282. In this situation, these funds are outside the direct control of the county commissioners, except as specified in ORC Section 307.283.

The community improvements board is composed of the following members:

Three members appointed by the mayor or chief executive of the most populous municipal corporation in the county with the approval of the municipal legislative authority. No more than two of these members can be members of the same political party.

Six members appointed by the county commissioners. One of these members must be the mayor or chief executive of another municipality in the county; one must be a township trustee; and one must represent either a major business trade association, labor organization, or be the mayor or chief executive of another municipality or another township trustee.

The board must also be established before the adoption of the resolution enacting the tax, however, original appointments need not be made for 15 days after the tax resolution is adopted. Terms are for three years.

#### **18.22 STREAMLINED SALES AND USE TAX AGREEMENT**

In its 2018 decision *South Dakota vs. Wayfair*, the U.S. Supreme Court overturned long-established precedents regarding the boundaries of state authority in requiring the collection of sales tax by out-of-state vendors. The decision upheld a South Dakota law

that required vendors to collect sales tax if the vendor meets either of two thresholds for use of the South Dakota market: \$100,000 in annual sales or 200 transactions.

In making its decision in *Wayfair*, the court overturned its holdings in *National Bellas Hess v. Department of Revenue of Illinois* (1967) and *Quill Corp v. North Dakota* (1992) that prohibited states from requiring an out-of-state internet or mail catalogue vendor to collect and remit sales tax unless the vendor had a physical presence within the state. In the *Quill* decision, the Supreme Court also had ruled that only Congress under the Commerce Clause of the U.S. Constitution had the power to create a level playing field by authorizing states to collect sales taxes from remote sellers. Because of *Bellas Hess* and *Quill*, as internet sales became more widespread, states and local governments lost large amounts of revenue because consumers rarely reported use tax that is due on out-of-state purchases. For example, Ohio law requires consumers to calculate their use tax and report it when filing their income tax returns, but very few do so voluntarily. A U.S. General Accountability Office study estimated that state and local governments could gain between \$8 billion and \$13 billion in 2017 if they could require remote sellers to collect sales tax.<sup>2</sup> The study estimated Ohio could gain between \$288 million and \$456 million annually, subject to significant uncertainty about compliance rates and the specifics of state law.

As the revenue implications of *Bellas Hess* and *Quill* became clear, some states joined together to create a formal legal structure to simplify sales tax collection and encourage voluntary compliance by remote sellers. The Streamlined Sales and Use Tax Agreement was launched by the National Governor's Association (NGA) and the National Conference of State Legislatures (NCSL) in the fall of 1999 to simplify sales tax collection. The Streamlined Sales Tax Project is a multistate effort to create uniform laws and rules for the collection of sales and use taxes among states. The project has involved participation by state tax administrators, state legislators, business interests and representatives of local governments at national and state levels

A primary goal of the Agreement is to minimize the cost and administrative burden to retailers that collect sales taxes, particularly retailers that operate in multiple states. By simplifying sales tax administration and encouraging uniform application of sales tax laws, the Agreement encourages remote sellers selling over the internet and by mail order to collect sales taxes in states that belong to the Agreement. States also hoped that the adoption of the Agreement would promote a level playing field for "bricks and mortar" retailers who must collect sales and use taxes while competing with internet, mail order, or telephone retailers who lacked a physical presence.

A third major goal of the Agreement was to have enough states pass conforming legislation to convince Congress to enact federal legislation authorizing individual states to collect sales and use taxes from remote sellers. According to the Streamlined Sales and Use Tax Agreement website, 24 states, including Ohio, representing roughly a third of the United States population had adopted legislation conforming individual state sales and

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<sup>2</sup> U.S. G.A.O., States could Gain Revenue from Expanded Authority, but Businesses are Likely to Experience Compliance Costs, GAO-18-114 (November 2017).

use tax laws with the Agreement as of 2018. States belonging to the Agreement hope that as the number of states adopting conforming legislation continues to grow, Congress would finally exercise its authority and pass legislation authorizing all states to collect sales and use taxes from remote sellers. Hopes were raised in 2013, when the Marketplace Fairness Act passed the U.S. Senate, but it never passed the U.S. House. As it turned out, the Supreme Court acted first in the *South Dakota v. Wayfair* decision.

In December, 2007 at a meeting of the Governing Board of the Streamlined Sales and Use Tax Project, an amendment was adopted by the Governing Board that was intended to assist states including Ohio that had been prevented from full compliance with the Agreement due to a reliance on “origin-based sourcing” for the collection of local and state sales taxes. Ohio had become an associate member in 2005. Prior to the 2007 amendment to the Agreement, the Agreement required, as a condition for full membership, that a state’s sourcing rules be “destination based” where a sale was generally deemed to have occurred where the goods and services were received by the customer. Destination-based sourcing rules stood in contrast to Ohio’s origin-based sourcing system. Under origin-based sourcing, a sale is generally deemed to occur where a vendor is located. The amendment to the Agreement permits states with local taxing districts that receive sales tax collections to apply origin-based sourcing to transactions that occur wholly within the state (for example, where an order for personal property is received by a vendor in the same state where the purchaser receives the property). Under the amendment, all interstate sales are sourced according to the destination rather than the origin of the sale. Ohio attained full membership in 2014.

Following in wake of the *South Dakota v. Wayfair* decision, the General Assembly included economic nexus provisions in the FY 2020-2021 budget bill (HB 166, 133<sup>rd</sup> G.A). The thresholds (\$100,000 annual sales or 200 transactions) are the same as South Dakota’s. As of August 1, 2019, out-of-state vendors that meet these criteria will have to register with the Ohio Department of Taxation and collect sales tax on behalf of the state and counties. Sales tax will be collected according to the county of the purchaser (destination-based sourcing). The same nexus thresholds will also apply to “marketplace facilitators” that facilitate retail sales on behalf of other businesses (e.g., Amazon).

### **18.23 THE MEDICAID MANAGED CARE ORGANIZATION SALES TAX**

In order to help fund the Medicaid program, the state of Ohio levies “franchise fees” on certain health care organizations that provide Medicaid services. These fees are used to cover part of the costs of the state financial match for the program. Organizations paying franchise fees include hospitals, nursing homes, intermediate care facilities for developmentally disabled individuals, and managed care organizations (MCOs). The largest franchise fees, by dollar amount raised, are from MCOs. The state pays MCOs an actuarially-determined rate each month to perform administrative functions such as paying providers and coordinating health care for individuals enrolled in Medicaid. Over time, the state has moved an increasing proportion of Medicaid recipients and Medicaid services into the managed care system, which now administers the majority of provider payments.

The states and the federal government have wrangled for decades over the use of franchise fees to help fund the Medicaid program. As federal policy toward franchise fees has changed over time, Ohio and other states have been forced to modify their approach. The issue for federal policy is that states find ways to build part of the cost of the fees into provider payment rates. Because the federal government pays a majority of the costs of the program, franchise fees can increase federal costs without providing any additional services or improving quality. Consequently, federal law allows the use of franchise fees or provider taxes to fund Medicaid services but establishes certain guidelines that limit their use.

In general, the provider fee must be: imposed on a permissible class of services; broad-based or apply to all services within a class; and, imposed at a uniform rate for all services within a class. Also, the fee must not allow arrangements that return the collected taxes directly or indirectly to the organization paying the tax (i.e., “hold-harmless” arrangements).<sup>3</sup>

The passage of the federal Deficit Reduction Act of 2005 created a new requirement that modified the definition of managed care organizations as a permitted class to include private sector health insurers. At that time, Ohio’s fee arrangement included a 5.5 percent Medicaid MCO franchise fee based on the amount of monthly payments received by each MCO. Alongside this, private sector health insuring corporations paid a 1.0 percent fee on their premiums. Because of the DRA, Ohio was given until September 2009 to modify its approach and create a uniform fee that applied to both Medicaid MCOs and private sector insurance organizations. Rather than equalize the fee across Medicaid and private sector insurers, the state opted to implement a new arrangement that applied state and local sales taxes to Medicaid payments to MCOs. This new Medicaid MCO sales tax was in place from 2010 to 2017.

The main purpose of this arrangement was to provide a state match for federal Medicaid grants. County and transit authority permissive sales taxes also applied based on the number of individuals enrolled in Medicaid managed care in each county, but the revenues were not used for state Medicaid match. Instead, the state distributed the proceeds to counties and transit authorities as part of their regular sales tax revenue. Revenue from the state sales tax was placed in the General Revenue Fund, and Medicaid MCOs were reimbursed for the costs of the tax through the Medicaid program.

The Medicaid MCO sales tax played a major role in providing revenue to counties as the economy climbed out of the Great Recession of 2008-2009. In 2010, counties received \$50.4 million from the Medicaid MCO sales tax. Revenues grew slowly after the recession and received a boost in the FY 2012-2013 state budget bill, which brought Medicaid pharmacy benefits under the managed care umbrella. After State Controlling Board approval, the state began to receive federal funding to extend Medicaid coverage to low-

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<sup>3</sup> 42 U.S.C. 1396b(w). For more detail, see U.S. Department of Health and Human Services, Office of the Inspector General, *Ohio’s And Michigan’s Sales And Use Taxes On Medicaid Managed Care Organization Services Did Not Meet The Broad-Based Requirement But Are Now In Compliance* (April 2017). Available at <https://oig.hhs.gov>.

income adults starting in January 2014. By 2016, the extension had increased Medicaid enrollment by 700,000 individuals and boosted revenues to nearly \$166 million for counties and \$44 million for transit authorities (almost 8 percent of total county sales tax revenue).

**Table 18-2. Medicaid MCO Sales Tax Revenue Distributed to Counties and Regional Transit Authorities**

<b>Year</b>	<b>Counties</b>	<b>Transit Authorities</b>
2010	\$50,355,916	\$12,053,886
2011	\$55,089,982	\$13,452,021
2012	\$68,414,167	\$15,904,439
2013	\$80,799,940	\$19,741,166
2014	\$110,616,745	\$27,222,395
2015	\$148,019,949	\$33,576,009
2016	\$165,656,793	\$43,668,305
2017*	\$127,455,502	\$31,057,837

Source: Ohio Department of Taxation.

\* Partial year; Final Distribution took place in September 2017.

In 2016, the federal government notified the state that the application of the sales tax only to Medicaid MCOs, and not to private sector health insuring corporations, was impermissible. In response, the state FY 2018-2019 budget bill replaced the tax with a new Medicaid fee structure that is not a sales tax and provides no benefit to counties. September 2017, was the final month of distribution from the Medicaid MCO sales tax. Under the new arrangement, fee revenue is placed in a special Medicaid fund that is not part of the state GRF.

During the FY 2018 – 2019 budget biennium, the state made four transition payments to counties and transit authorities to compensate for the end of the Medicaid MCO sales tax. The first two payments were authorized by House Bill 49, the state budget bill, and took place in November 2017 and January 2018. Counties received a total of \$172.5 million combined from these HB 49 payments, and transit authorities received \$34.4 million. These payments were based on two factors: (1) a fourth quarter 2017 replacement aid amount and (2) a formula amount that reflected each county and transit authority’s relative ability to absorb the effects of the Medicaid local sales revenue loss, adjusted for its sales tax capacity. The effect of including a factor based on tax capacity meant that some counties received the equivalent more than a year’s worth of revenue, but some counties received less.

House Bill 69 authorized the final two transition payments, which were made in January and August 2018. The latter distribution was conditional on the state achieving a budget surplus at the end of FY 2018. These payments were made on the basis of each county or transit authority’s proportionate share of all Medicaid MCO sales tax revenue received in calendar years 2015 and 2016. The January 2018 payment provided \$40.2 million to counties and \$9.8 million to transit authorities, while the August 2018 payment gave \$24.1 million to counties and \$5.9 million to transit authorities. No further transition payments are authorized.

**Table 18-3. Medicaid MCO Sales Tax Transition Payments to Counties and Transit Authorities, (in millions)**

	House Bill 49		House Bill 69		Total
	Nov. 2017	Jan. 2018	Jan. 2018	Aug. 2018	
Counties	\$86.2	\$86.2	\$40.2	\$24.1	\$236.7
Transit Authorities	\$17.2	\$17.2	\$9.8	\$5.9	\$50.1
Total	\$103.4	\$103.4	\$50.0	\$30.0	\$286.8

Source: Ohio Department of Taxation.  
 Note: Numbers are rounded.

The Ohio Tax Department maintains information related to county and transit authority collections from the former tax at the following website:

[https://www.tax.ohio.gov/tax\\_analysis/tax\\_data\\_series/sales\\_and\\_use/publications\\_tds\\_sales.aspx](https://www.tax.ohio.gov/tax_analysis/tax_data_series/sales_and_use/publications_tds_sales.aspx).

A list of transition payments made to each county is available at:  
[https://www.tax.ohio.gov/government/distributions\\_sales.aspx#3148681-statute](https://www.tax.ohio.gov/government/distributions_sales.aspx#3148681-statute).

A 2018 Ohio Attorney General Opinion (2018-005) addressed the use of transition payments by counties in an advisory opinion requested by the Jackson County Prosecuting Attorney. At issue was whether the board of commissioners had to distribute Medicaid transition funds by strictly following the purposes and allocation methodologies specified in its current sales tax resolutions. As a general principle, the Opinion states that transition fund money may be transferred at any time and in any quantity as indicated by the county’s resolution establishing the county’s Medicaid Transition Fund. In other words, the new resolution controls the transfer of money from the Medicaid Transition Fund, and it does not have to follow the same proportions as existing sales tax levies. The opinion goes on to warn, however, that all existing budgetary funds specified by law should receive some transition funds:

In other words, it presumably is unreasonable for a board of county commissioners to entirely withhold County Transition Fund money from a fund currently receiving a lawful portion of the county's sales and use tax revenue; a board should, in reasonable exercise of its discretion, make some transfer of money to each fund currently receiving a portion of the county's sales and use tax revenue before its County Transition Fund is depleted. (Atty. Gen. Op. 2018-005, p. 12)

## APPENDIX

TABLE 18-4: PRIMARY SALES AND USE TAX STATUTORY REFERENCES

TOPIC	ORC SECTION
Procedures relating to tax referendum	305.31-305.42
Submission of transit tax to electors by county commissioners or regional transit authority	306.70
Submission of the question of reducing the rate of a transit tax to electors	306.71
Permissive "rollback" of inside millage in conjunction with a sales and use tax	5705.313
Authority to enact the 1% sales tax, and the special ½% tax for jail construction	5739.021
Procedures for an initiative election to repeal an emergency sales and use tax or the ½% additional sales and use tax	5739.022
Authority to enact the transit authority tax by commissioners or transit authority	5739.023
Authority to enact the ½% additional sales and use tax	5739.026
Authority to enact the 1% use tax	5741.021
Authority to enact the transit authority use tax by commissioners or transit authority	5741.022
Authority to enact the ½% additional use tax	5741.023



TABLE 18-5: SUMMARY OF LOCAL PERMISSIVE SALES AND USE TAX AUTHORITIES

18-5a: SALES AND USE TAX (O.R.C. 5739.021, 5741.021)								
ORC SECTION	TAXING AUTHORITY	RATE OPTIONS	PURPOSE USE	HEARINGS & NOTICE REQUIRED	ENACTMENT OPTIONS	REPEAL PROCEDURES (ORC SECTION)	EFFECTIVE DATE OF TAX	COMMENTS
5739.021 5741.021	Board of County Commissioners	Multiples of 0.05% Maximum of 1.00%, unless using special 0.5% for jail construction	<ul style="list-style-type: none"> <li>• General Fund</li> <li>• Criminal and Administrative Justice Services</li> <li>• Administration of tax</li> <li>• Special tax for jail construction</li> </ul>	Yes	Regular  Emergency  Submission to Electors (90 days) at general or primary election (required for special tax for jail construction)	Resolution of county commissioners OR referendum (305.31-.42, 3501.38)  Resolution of county commissioners OR initiative election to repeal (5739.022, 305.31-.42, 3501.38)	1 <sup>st</sup> day of quarter 65 days after notice to state tax commissioner by county commissioners	<ol style="list-style-type: none"> <li>1. May reduce inside millage when enacting tax, increasing rate or at any time tax is in effect (5705.313)</li> <li>2. May reduce rate to authorized rate</li> <li>3. If tax is rejected by electors (through referendum or initiative), may not enact tax</li> <li>4. May specify a later effective date for tax in enacting resolution</li> </ol>

**18-5b: ADDITIONAL SALES AND USE TAX (O.R.C. 5739.026, 5741.023)**

ORC SECTION	TAXING AUTHORITY	RATE OPTIONS	PURPOSE USE	HEARINGS & NOTICE REQUIRED	ENACTMENT OPTIONS	REPEAL PROCEDURES (ORC SECTION)	EFFECTIVE DATE OF TAX	COMMENTS
5739.026 5741.023	Board of County Commissioners	Multiples of 0.05% Maximum of 0.50%	<ul style="list-style-type: none"> <li>• Convention facilities</li> <li>• Transit</li> <li>• Community Improvement Board permanent improvements</li> <li>• Specific permanent improvements; construction of join recreation district facilities</li> <li>• 9-1-1 phone systems</li> <li>• Operation and maintenance of a detention facility</li> <li>• Finance construction or renovation of a sports facility</li> <li>• Acquisition of agricultural easements</li> <li>• Provision of ambulance, paramedic, or other emergency medical services</li> <li>• Operation of lake facilities authority and the remediation of an impact watershed by the authority</li> <li>• Regional transportation improvement project</li> <li>• Administration of the tax</li> </ul>	No	Submission to electors (90 days) at general or primary, unless for general fund only	Resolution of county commissioners	1 <sup>st</sup> day of quarter 65 days after notice to state tax commissioner by county commissioners	<ol style="list-style-type: none"> <li>1. May reduce inside millage when enacting tax, increasing rate or at any time tax is in effect (5705.313)</li> <li>2. May reduce rate to authorized rate</li> <li>3. If tax is rejected by electors (through referendum or initiative), may not enact tax</li> <li>4. May specify a later effective date for tax in enacting resolution</li> <li>5. May use proceeds of tax for more than one purpose. In this case, must specify method to distribute tax among eligible purposes</li> <li>6. A tax for the General Fund may also be included with other purposes (5739.026(A)(3)).</li> <li>7. A tax for 9-1-1 services may not be longer than five years</li> <li>8. There is no one-year restriction upon re-enactment of this tax after previous repeal</li> </ol>

5739.026(A)(3) 5741.023			<ul style="list-style-type: none"> <li>• General Fund</li> <li>• Administration of the tax</li> </ul>	Yes	Regular	Resolution of county commissioners OR referendum (305.31-.42, 3501.38)	<ol style="list-style-type: none"> <li>1. May reduce inside millage when enacting tax, increasing rate or at any time tax is in effect (5705.313)</li> <li>2. May reduce rate to authorized rate</li> <li>3. May specify a later effective date for tax in enacting resolution</li> <li>4. May be included as a part of a tax for other authorized purposes pursuant to ORC 5739.026, <b>however, must then be submitted to electors</b></li> </ol>
					Emergency	Resolution of county commissioners OR initiative election to repeal (5739.022, 305.31-.42, 3501.38)	
					Submission to electors (90 days) at general or primary	Resolution of county commissioners (5739.026(D)(2)(a))	
					Emergency/Submission to electors at general (90 days)	Resolution of county commissioners (5739.026(D)(2)(b)) OR initiative election to repeal (5739.022, 305.31-.42, 3501.38)	

18-5c: TRANSIT BOARD OR REGIONAL TRANSIT AUTHORITY								
ORC SECTION	TAXING AUTHORITY	RATE OPTIONS	PURPOSE USE	HEARINGS & NOTICE REQUIRED	ENACTMENT OPTIONS	REPEAL PROCEDURES (ORC SECTION)	EFFECTIVE DATE OF TAX	COMMENTS
5739.022 5741.022 306.32 306.70-.71	Board of County Commissioners for county transit board (306.01, 5739.01(U)(V) or regional transit authority (306.01, 5739.01(U)(V))	Multiples of 0.05%, 0.10% or 0.25%  Maximum of 1.5%, unless county uses special jail construction authority under ORC 5739.021	<ul style="list-style-type: none"> <li>• General revenue for transit</li> <li>• Administration of tax</li> </ul>	No	Submission to Electors (90 days) at general or primary election	Resolution of county commissioners OR regional transit authority board	1 <sup>st</sup> day of quarter 65 days after notice to state tax commissioner by county commissioners	<ol style="list-style-type: none"> <li>1. May <b>not</b> reduce inside millage when enacting tax or increasing rate</li> <li>2. May reduce rate to authorized rate</li> <li>3. May fix the rate of the tax up to the level authorized by voters by resolution</li> <li>4. Electors may petition for election reduce rate (306.71)</li> <li>5. May specify later effective date in enacting resolution</li> <li>6. Special provisions apply when enlarging the jurisdiction of a regional transit authority</li> </ol>

TABLE 18-6: SAMPLE STATEMENT AND PRELIMINARY PLAN

COUNTY OF \_\_\_\_\_

STATEMENT AND PRELIMINARY PLAN FOR  
CRIMINAL AND ADMINISTRATIVE JUSTICE SERVICES

(This statement is prepared in compliance with ORC 5739.021 (G))

PART I

Estimate of Board of County Commissioners of amount of expenditures made from the general fund during the preceding two fiscal years for criminal and administrative justice services.

PURPOSE	FIRST PRECEDING	SECOND PRECEDING
Sheriff (excluding detention facilities)		
Operation and maintenance detention facilities		
Construction, acquisition, equipping and repair of detention facilities, including debt service		
Payment to agencies for diversion, adjudication, detention or rehabilitation of criminal or juvenile offenders		
Prosecutor		
Coroner		
Common Pleas Courts		
County Courts		
Municipal Courts		
Court of Appeals		
Clerk of Municipal Court with Countywide jurisdiction		
Clerk of County Court		
Clerk of Court of Common Pleas, excluding title bureau		
<b>TOTAL</b>		

PART II

Estimate of Board of County Commissioners of amount of expenditures that will be made from the general fund during the **current fiscal year** for criminal and administrative justice services

<b>PURPOSE</b>	<b>CURRENT</b>
Sheriff (excluding detention facilities)	
Operation and maintenance detention	
Construction, acquisition, equipping and repair of detention facilities, including debt	
Payment to agencies for diversion, adjudication, detention or rehabilitation of criminal or juvenile offenders	
Prosecutor	
Coroner	
Common Pleas Courts	
County Courts	
Municipal Courts	
Court of Appeals	
Clerk of Municipal Court with Countywide jurisdiction	
Clerk of County Court	
Clerk of Court of Common Pleas, excluding title bureau	
<b>TOTAL</b>	

PART III

A preliminary plan of the Board of County Commissioners for expenditures for criminal and administrative justice services for the next two fiscal years from the general fund **assuming the tax is imposed** and **assuming the tax is not imposed**.

PROPOSED PRELIMINARY PLAN OF EXPENDITURES FROM THE GENERAL FUND

PURPOSE	TAX IMPOSED		TAX NOT IMPOSED	
	FIRST	SECOND	FIRST	SECOND
Sheriff (excluding detention facilities)				
Operation and maintenance of detention facilities				
Construction, acquisition, equipping, and repair of dentition facilities, including debt service				
Payment to agencies for diversion, adjudication, detention, or rehabilitation of criminal or juvenile defenders				
Prosecutor				
Coroner				
Common Pleas Courts				
County Courts				
Municipal Courts				
Courts of Appeals				
Clerk of Municipal Court with countywide jurisdiction				
Clerk of County Court				
Clerk of Court of Common Pleas, excluding title bureau				
TOTAL				

PART IV

A preliminary plan of the Board of County Commissioners for expenditures for criminal and administrative justice services for the **next two fiscal years from a special fund assuming tax is imposed**

PURPOSE	FIRST SUCCEEDING	SECOND SUCCEEDING
Sheriff (excluding detention facilities)		
Operation and maintenance detention facilities		
Construction, acquisition, equipping and repair of detention facilities, including		
Payment to agencies for diversion, adjudication, detention or rehabilitation of criminal or juvenile		
Prosecutor		
Coroner		
Common Pleas Courts		
County Courts		
Municipal Courts		
Court of Appeals		
Clerk of Municipal Court with countywide jurisdiction		
Clerk of County Court		
Clerk of Court of Common Pleas, excluding title bureau		

**CERTIFICATION:** We hereby certify that this statement and preliminary plan was prepared using the best information currently available and complies with ORC Section 5739.021(G)



BOARD OF COUNTY COMMISSIONERS OF \_\_\_\_\_ COUNTY

**ATTEST:** I hereby certify that this Statement and Preliminary Plan is a true and exact copy of the statement and Preliminary Plan adopted by resolution of the Board of County Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_