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# HANDBOOK

**Ohio County Commissioners**

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## CHAPTER 19

# COUNTY PERMISSIVE REAL PROPERTY AND MANUFACTURED HOME TRANSFER TAXES

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### 19.01 INTRODUCTION

In 1967 the General Assembly granted counties the authority to enact a permissive real property transfer tax. At the same time the General Assembly also authorized counties to enact permissive sales and use, utilities service, and motor vehicle license taxes.

Since the original county permissive tax package was enacted the General Assembly has granted counties two new permissive tax options. In 1980, the Legislature authorized a county permissive lodging tax. The primary purpose of this tax is to fund the operations of convention and visitors bureaus operating in the county. In 1986, authority was granted to enact a permissive liquor and cigarette tax for the purpose of financing the construction and operation of a sport facility for major league professional sports.

The enactment of the permissive tax package by the General Assembly during the 1960's significantly changed the way counties could finance services because prior to the ability to utilize permissive taxes counties were almost entirely dependent on property taxes.

In 1999, the 122<sup>nd</sup> General Assembly enacted SB 142 which included extensive changes to Ohio's law on manufactured homes. The primary purpose of the legislation 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 which allowed counties that had a permissive real property transfer tax in effect to also levy a permissive manufactured home transfer tax. The rate of the manufactured home transfer tax had to be at the same rate as the real property transfer tax to insure equitable treatment for manufactured homes.

The manufactured home transfer 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, a used manufactured or a used mobile home. A used manufactured or mobile home is defined in ORC Section 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 other permissive 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 18, the *Permissive Sales and Use Tax*, Chapter 20, the *Permissive Motor Vehicle License Tax*, and Chapter 21, the *Permissive Lodging Tax*.

The real property and manufactured home transfer tax may be used for general fund purposes and for the administration and enforcement of the tax, although some counties have internally allocated the receipts from the tax for such functions as GIS and economic development.

In addition, all or a portion of the proceeds of the real property transfer tax (not the manufactured home transfer tax) may be deposited in the bond retirement fund for the payment of debt service charges on notes or bonds of the county issued for the acquisition or construction of permanent improvements. The remainder of this Chapter will describe the details of enactment of the real property and manufactured home transfer tax as authorized in ORC Chapter 322.

## **19.02 SPECIAL COMMENTS ON THE MANUFACTURED HOME TRANSFER TAX**

While this Chapter generally refers to the real property and manufactured home transfer taxes as if they are interchangeable, they are actually two separate taxes authorized under different sections of the Ohio Revised Code. The real property transfer tax is authorized in ORC Section 322.02 and the manufactured home transfer tax is authorized in ORC Section 322.06. This tax is also levied against used mobile homes.

The rate of the manufactured home transfer tax may never be higher than the rate of the real property transfer tax. Indeed, a county may not even enact the permissive manufactured home transfer tax at all if there is no real property transfer tax in effect.

Also, if a county enacted or increased its real property transfer tax prior to 2000, the tax does not apply automatically to manufactured homes unless the commissioners have specifically enacted the manufactured home transfer tax at the same rate as the real property transfer tax.

For counties that enact or increase the rate of the tax it is necessary to enact or increase the rate under both of the Ohio Revised Code sections listed above in order to ensure that both real property and manufactured homes become subject to the permissive tax. CCAO believes that this can be done in one resolution; however, we understand that some counties have used two resolutions to enact the taxes. We advise counties in this situation to consult the Prosecutor.

### **19.03 RATE OF TAX**

The permissive real property and manufactured home transfer tax may be levied at a millage rate not to exceed 3 mills or 30¢ per hundred dollars of value. The tax is paid at the time of the transfer of a deed by the county auditor by the grantor of the deed and prior to the time the deed is recorded by the county recorder. It should be noted that the permissive real property and manufactured home transfer tax is in addition to a statewide mandatory 1 mill (10 ¢ per hundred dollars of value) conveyance fee that is collected in each county pursuant to ORC 319.54(G)(3).

### **19.04 AUTHORITY TO LOWER RATE FOR OWNERS ELIGIBLE FOR HOMESTEAD EXEMPTION**

ORC Section 322.07 authorizes county commissioners to establish a lower rate for real property and for manufactured homes subject to the homestead exemption. If the commissioners establish a lower rate for those eligible for the real property homestead exemption (ORC 323.152), they must also allow this lower rate for those eligible for the manufactured home homestead exemption (ORC 4503.065). This action is taken by resolution of the county commissioners.

### **19.05 EXEMPTIONS FROM THE TAX**

Both the mandatory conveyance fee and the permissive tax are based on the value of the property that is transferred. Both the mandatory fee and the permissive tax (a combined maximum of 4 mills) apply to the selling price of real estate at the time of sale.

ORC 319.54(G)(3) exempts certain conveyances from the mandatory fee and the permissive tax. During 2010, a total of 172,477 (45% of the total) transfer fee statements filed with the county auditors were exempted from the mandatory fee and the permissive tax. The lowest percentage exempted was in Warren County with 34% exempted. Wyandot County, with 68%, had the highest percentage exempted.

**19.06 ENACTMENT OPTIONS**

County commissioners have three options when enacting the permissive real property and manufactured home transfer tax as follows:

- 1. **REGULAR METHOD** - This method involves the adoption of a resolution by the board and is subject to referendum. The resolution is not effective for 30 days during which a referendum petition can be filed. If a referendum is petitioned 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 then not subject to a referendum or initiative repeal in the future; however, the tax may be repealed or reduced by the commissioners.
  
- 2. **EMERGENCY METHOD** - This method involves the adoption of a resolution as an emergency measure necessary for the immediate preservation of the public peace, health or safety. The resolution, becomes effective immediately, and while not subject to referendum, is subject to an initiative or an election to repeal at any subsequent general election by petition filed 90 days before a general election. The commissioners must act unanimously and must state the reasons for the emergency.
  
- 3. **ELECTORATE METHOD** - This method allows the 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.

**19.07 EFFECTIVE DATES OF TRANSFER TAX**

The real property and manufactured home transfer tax enacted by the regular method becomes effective 30 days after its adoption if no referendum petition is submitted. If a referendum is submitted and a vote occurs at the next general or primary election and the tax is approved by the electors, it becomes effective on the first day of the month after the certification of the results of the election by the board of elections.

A permissive real property or manufactured home transfer tax enacted as an emergency measure becomes effective immediately. If such a tax becomes subject to an initiative or election to repeal in a subsequent year at a general election and the tax is then repealed by the electors, the tax remains in effect for the rest of the calendar year and is repealed on January 1 of the next year.

**19.08 PUBLIC HEARINGS AND NOTICE REQUIREMENTS**

Prior to the adoption of a resolution enacting the tax, the following public hearing and notice requirements apply.

1. Two public hearings must be held before the adoption of the tax resolution.
2. The second hearing must be no less than 3 or more than 10 days after the first hearing.
3. 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.

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 on the CCAO website at [www.ccao.org](http://www.ccao.org).

#### **19.09 REMOVAL OF PERMISSIVE TAXES**

There are three separate methods to remove or repeal the real property and manufactured home transfer tax as follows:

1. The county commissioners may reduce or repeal the tax.
2. If the permissive tax is enacted by the regular method, a petition for referendum can be filed within 30 days after adopting the permissive tax resolution. If a valid petition is filed the tax does not become effective unless approved by the electors.
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 a general election.

Finally, ORC Section 305.35 provides that the board of elections will not submit to a vote a referendum on a permissive tax enacted as a regular measure for which a petition has been submitted and verified (by the county auditor) if the commissioners repeal the tax after the petition is submitted. Thus, commissioners may repeal the permissive tax resolution enacted as a regular measure prior to a vote and after a petition requesting a vote has been submitted.

#### **19.10 REFERENDUM ON A PERMISSIVE TAX ENACTED 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% 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 tax resolutions receiving an affirmative majority vote become effective on the first day of the month following certification of the vote by the board of elections.

### **19.11 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 their own name nor may anyone authorize another to sign on their 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.

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

To initiate the repeal of a permissive real property and manufactured home transfer tax enacted as an emergency measure, a petition must be filed with the board of elections 90 days before a general election in any year. The petition must be signed by 10% of those voting for Governor in the last gubernatorial election. The petition requirements are the same as for a referendum petition as specified in Section 19.10 and the petition requirements detailed in Section 19.11 also apply, except in this case the petition is filed with the board of elections, not the county auditor.

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 [www.ccao.org](http://www.ccao.org).

If the tax is repealed at such an election, it will be collected for the remainder of the calendar year. The form of the ballot is prescribed by the Secretary of State.

## **19.13 CURRENT STATUS OF THE TAX**

The Ohio Department of Taxation collects data from each county auditor annually on the revenue generated from both the mandatory 1 mill conveyance fee and the permissive transfer tax.

In 2010, the mandatory conveyance fees and the permissive tax generated \$81.7 million: \$25.5 million mandatory fees and \$56.2 million from the permissive tax. The number of conveyances on which the mandatory transfer fees were collected ranged from 247 in Vinton County to 21,591 in Franklin County. The total mandatory transfer fees collected by each county ranged from \$13,326 in Vinton County to \$3.6 million in Franklin County. The average mandatory transfer fee collected by each county ranged from \$43.68 in Noble County to \$248.04 in Delaware County, with a statewide average of \$121.05.

For those counties that charge both the mandatory and permissive fees (all excluding Ross county), the total collected, including both mandatory and permissive fees, ranged

from \$49,178 in Monroe County to \$9.8 million in Cuyahoga County. The average total transfer fee collected by each county ranged from \$145.92 in Pike County to \$756.45 in Delaware County, with a statewide average of \$387.93.

Data from both the mandatory fee and the permissive tax for previous years can be found at:

[http://tax.ohio.gov/divisions/tax\\_analysis/tax\\_data\\_series/publications\\_tds\\_property.stm#RealPropertyOnly](http://tax.ohio.gov/divisions/tax_analysis/tax_data_series/publications_tds_property.stm#RealPropertyOnly)