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# COUNTY ADVISORY BULLETIN

CAB

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**BULLETIN 1994-03**

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## **THE CRIMINAL AND ADMINISTRATIVE JUSTICE SERVICES SALES TAX**

### **INTRODUCTION**

Legislation became effective on April 21, 1994 that will authorize counties to enact a permissive sales and use tax to support criminal and administrative justice services in the county. The change in the law is the result of the enactment of Am. Sub. HB 677 as an emergency measure. The bill was sponsored by Representative William Healy (D-Canton) at the request of Stark County officials. Stark County and Butler County are the only counties that presently do not have a sales and use tax in effect.

Stark County has a long history of voter rejection of the sales and use tax. With the recent repeal of the tax in Stark County and significant funding reductions to criminal justice, proponents felt that the voters would be more likely to approve a sales tax if the proceeds were used to specifically support the criminal justice system.

This CAB will summarize the provisions of this new sales tax option for counties. It should be stressed that the new law does not increase the maximum permissive sales and use tax rate that may be enacted. Commissioners are still limited to a maximum rate of 1.5 percent, but may now specifically provide that a portion will be used for criminal and administrative justice services.

This CAB will not discuss in detail all the procedural requirements under existing law. These are described in detail in Chapter 16 of the *COUNTY COMMISSIONERS' HANDBOOK*. Table 1, however, summarizes the various sales and use tax options under current law, including the provisions of HB 677.

It is recommended that this CAB be three hole punched and inserted after the CCAO INFORMATION TAB in the *COUNTY COMMISSIONERS' HANDBOOK*. County Advisory Bulletins 94-1 and 94-2 should already be in place after this TAB.

### **MAJOR PROVISIONS OF HB 677**

The bill includes the following major changes to the county permissive sales and use tax law:

1. Allows county commissioners to enact a permissive sales and use tax to support criminal and administrative justice services.
2. This new authority applies only to the one percent permissive sales and use tax authorized pursuant to the provisions of ORC 5739.021 and 5741.021, not to the additional ½ percent permissive sales and use tax authorized under ORC 5739.026 and 5741.023.
3. Allows a portion of the tax to be used to provide additional general revenues and a portion to be used to support criminal and administrative justice services.
4. If a portion of the tax is used to provide additional general revenues and a portion is used to support criminal and administrative justice services, the resolution must specify the rate or amount that will be apportioned to each purpose. The rate or amount to be apportioned for these two purposes may be different for each year the tax is levied.
5. If any portion of the tax is to be levied to support criminal and administrative justice services the revenue derived for this purpose must be credited to a special revenue fund, and not deposited in the general fund.
6. If any portion of the tax is to be levied to support criminal and administrative justice services the commissioners must prepare and make available at the first public hearing a statement of current past expenditures from the general fund for criminal and administrative justice services and a preliminary plan of expenditures for the next two years.
7. Specifically defines criminal and administrative justice services.
8. Does not change any of the existing permissive tax enactment options or existing public hearing and notice requirements.

#### **CONTENTS OF RESOLUTION WHEN TAX IS FOR ONE SPECIFIC AUTHORIZED PURPOSE**

Commissioners enacting the ORC 5739.021 sales and use tax may continue to enact the tax exclusively to provide additional general revenues and for administration of the tax. In such a situation the resolution should specifically list these two purposes.

To enact the tax exclusively to support criminal and administrative justice services, it is recommended that the resolution state that the purpose will be to support criminal and administrative justice services as defined in ORC Section 5739.021(H) and for administration of the levy.

#### **CONTENTS OF RESOLUTION IF TAX IS FOR BOTH AUTHORIZED PURPOSES**

To enact the tax to provide both additional general revenues and to support criminal and administrative justice services the resolution should specifically state that the purpose of the tax is to provide additional general revenues, to support criminal and administrative justice services as defined in ORC Section 5739.021(H), and for the administration of the levy.

In addition, the law requires that if a portion is to be used to provide additional general revenues and a portion is to be used to support criminal and administrative justice services, that the resolution must contain additional information.

In these cases the resolution must include the "rate or amount of the tax to be apportioned to each such purpose." This "rate or amount" may be different for each year the tax is to be levied, and the rates or amounts actually apportioned in the resolution must be adhered to each year.

For example, a county could enact the tax at a rate of ½ percent for five years. In such a situation, the county could provide that during each year 1/4 percent would go to the general fund and 1/4 percent would be deposited in a special revenue fund to support criminal and administrative justice services.

Likewise, a county enacting a ½ percent tax could specify that during each year the first \$300,000 would go to a special fund to support criminal and administrative justice services, and that any amount collected in excess of \$300,000 would be for the purpose of providing additional general revenues to be deposited in the general fund.

The options are virtually unlimited as to how commissioners may divide revenue between the two authorized purposes. Two other examples may help to show how the revenue 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 AND ADMINISTRATIVE JUSTICE SERVICES	
1	½ %		1/2%
2	1/2%		1/2%
3	1/2%		1/2%
4	1/4%		3/4%
5	1/4%		3/4%
6	1/4%		3/4%
7	1/4%		3/4%

8	1/4%	3/4%
9	0%	1%
10	0%	1%

**EXAMPLE #2 - A 1% TAX FOR A PERIOD OF 10 YEARS**

**AMOUNT TO CRIMINAL AND**

**YEAR # ADMINISTRATIVE JUSTICE  
SERVICES**

**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

It should be noted that nothing precludes the enactment of the tax for a continuing period of time, however, the law requires that the resolution must specify the "rate or amount" that will be used each year for the two purposes. The law provides flexibility so that different amounts could be apportioned each year the tax is in effect.

Finally, counties should note that the law provides that the commissioners must specify the "rate or amount" if the tax is to be used for both purposes. This is different than the language in ORC 5739.026 where the ½ percent additional sales and use tax is used for multiple authorized purposes. The language in ORC 5739.026 provides that the commissioners must specify the "amount or proportion" if the tax is used for more than one purpose. This is significant because under this language the commissioners could specify, for example, that 80 percent of the proceeds would be used for one of the authorized purposes and 20 percent would go to another authorized purpose. The language in ORC 5739.021 apparently would not allow this type of percentage allocation. CCAO had recommended the use of the word "proportion" instead of "rate", however, this amendment was not adopted.

### **ELIGIBLE USES OF REVENUE FOR CRIMINAL AND ADMINISTRATIVE JUSTICE SERVICES**

Any county enacting all or any portion of the 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.
7. The operation and maintenance of a detention facility as defined in ORC 2921.01.
8. The construction, acquisition, equipping or repair of a detention facility, including debt service.

It should be noted that this list of eligible purposes does not include public defenders or indigent defense costs. CCAO had requested such specific authorization, which the sponsor rejected. These costs are thus probably not allowable unless the prosecutor rules that indigent defense costs are allowable under the provision allowing the funds to be used by any court in the county. In this situation it may be necessary to include assigned counsel costs within the budgets of the various courts and not as a separate line item apart from the court budget.

### **REQUIREMENT FOR PREPARATION OF BUDGET STATEMENT AND PRELIMINARY**

## **PLAN**

Any county proposing to enact all or a portion of a permissive sales and use tax for criminal and administrative justice services must prepare a Statement and Preliminary Plan for the use of the funds. This 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 each of the two previous 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 fiscal 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 proposed expenditures from the general fund both ways, first assuming the proposed tax is imposed and second, assuming it is not imposed.
4. A Preliminary Plan for each of the next two fiscal 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.

Attached to this CAB as Table 2 is a suggested format that could be used as a model for the purpose of preparing the required Statement and Preliminary Plan, which probably should be adopted by resolution. Counties are urged to work with the Auditor and Prosecutor in preparing the Statement and Preliminary Plan.

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 or the Preliminary Plan can be used as a basis to challenge the validity of the tax in court.

Finally, the Statement and Preliminary Plan does not limit the authority of the commissioners from later appropriating an amount different from that specified in the Preliminary Plan.

## **CONCLUSION**

Counties now have the authority to use all or any portion of the one percent permissive sales and use tax authorized pursuant to ORC Sections 5139.021 and 5741.021 to support criminal and administrative justice services. The purpose of this CAB is to provide general guidance when enacting the tax. Counties are encouraged to refer to the statute, consult with the Auditor and Prosecutor, and work with the Ohio Department of Taxation early in the enactment process. Those counties that intend to place the issue before the electors are also encouraged to discuss the form of ballot language early with the Board of Elections. CCAO is also available to assist.

**TABLE 1**

**SUMMARY OF LOCAL PERMISSIVE SALES AND USE TAX AUTHORITIES**

ORC SECTION	TAXING AUTHORITY	RATE OPTIONS	PURPOSE USE	HEARING & NOTICE REQUIREMENT	ENACTMENT OPTIONS	REPEAL PROCEDURE (ORC SECTION)	EFFECTIVE DATE	COMMENTS
5739.021	County Comm.	1/4%	General fund	Yes	Regular	Resolution of county commissioners	1st day of month after 60 days notice to tax comm. by comm.	1. May reduce inside millage when enacting tax or increasing rate (5705.313). 2. May reduce rate to authorized rate. 3. Cash register reimbursement required.
5741.021		1/2%	Criminal and Administrative Justice Services		Referendum (305.31-305.42, 3501.38)	4. If tax is rejected by electors, by referendum or initiative, may not enact tax as an emergency for one year (5739.021(C)).		
		3/4%	Administration of tax		Resolution of county commissioners	5. May specify a later effective date for tax in enacting resolution.		
		1%	Emergency		Initiative election to repeal (5739.022, 305.31-305.42, 3501.38)	1st day of month after 30 days notice to tax commissioner by commissioners 6. Proceeds may be used for both general fund and for criminal and administrative justice services. In this case, must specify rate or amount for each purpose by year. 7. If any portion is to be used for criminal and administrative justice services a Statement of past expenditures and Preliminary Plan of future expenditures must be prepared and made available at first public hearing.		

Submission to Electors (75 days) at general or primary

Resolution of county commissioners (5739.02(B)(2)(a))

1st day of month after 30 days notice to tax commissioner by board of elections

Emergency/

Submission to electors at general (75 days)

Resolution of county commissioners (5739.021(B)(2)(b))

Initiative election to repeal (5739.022, 305.31 - 305.42, 3501.38)

1st day of month after 30 days notice to tax commissioner by commissioners

5739.026	County commissioners	1/4%	Convention Facilities (5739.026(A)(1))	No	Submission to electors (75 days) at general or primary	Resolution of county commissioners	1st day of month after 30 days notice to tax commissioner by board of elections.	<ol style="list-style-type: none"> <li>1. May reduce inside millage when enacting or increasing rate (5705.313).</li> <li>2. May <u>not</u> reduce rate of tax.</li> <li>3. Cash register reimbursement required.</li> <li>4. May specify later effective date in enacting resolution.</li> <li>5. Proceeds may be used for more than one purpose. In this case, must specify the amount or proportion for each purpose by year.</li> <li>6. A tax for general fund (5739.026(A)(3)) may also be included with other purposes.</li> <li>7. There is <u>no</u> one year restriction upon re-enactment of</li> </ol>
5741.023		1/2%	Transit (5739.026(A)(2))					
			General Fund (5739.026(A)(3))					
			Community Improvement Board (CIB) Permanent Improvements (5739.026(A)(4))					



Specific permanent improvements  
(5739.026(A)(5))

For 911 phone systems  
(5739.026(A)(6))

Operation and maintenance of detention facility  
(5739.026(A)(7))

Administration of tax

this tax after previous repeal.

5739.026					Resolution of county commissioners	1st day of month after 60 days notice to tax commissioner by commissioners	1. May reduce inside millage when enacting or increasing rate (ORC 5705.313).
(A)(3)	County commissioners	1/4%	General fund	Regular	Referendum (305.31-305.42, 3501.38)		2. May <u>not</u> reduce rate of tax.
5741.023		1/2%	Administration of tax	Yes	Resolution of county commissioners		3. Cash register reimbursement required.
				Emergency	Initiative election to repeal (5739.022, 305.31-305.42, 3501.38)	1st day of month after 30 days notice to tax commissioner by commissioners	4. May specify later effective date in enacting resolution.
							5. May be included as part of a tax for other authorized purposes. Pursuant to ORC 5739.026(A)(1)-(A)(7) (above), however, must then be submitted to electors.
							6. There is no one year restriction upon re-enactment of this tax after previous repeal.

Submission to electors (75 days) at general or primary  
 Resolution of county commissioners (5739.026D)(2)(a)  
 1st day of month after 30 days notice to tax commissioner by board of elections

Emergency/ Submission to electors (75 days) at general  
 Resolution of county commissioners (5739.026D)(2)(b))  
 Initiative election to repeal (5739.022, 305.31-305.42, 3501.38)  
 1st day of month after 30 days notice to tax commissioner by commissioners

5739.023	1/4%								
5741.022	1/2%	County commissioners for county transit board (306.01,	General revenue for transit						
306.32	3/4%	5739.01(U)(V) or regional transit authority (306.31,		No	Submission to electors (75 days) at general or special	Resolution of county commissioners or regional transit authority	1st day of month after 60 days notice to tax commissioner by board of elections.		
306.70	1%	5739.01(U)(V)	Administration of tax						
306.71	1 1/4%								
	1 1/2%								

1. May not reduce inside millage when enacting or increasing rate.
2. May reduce rate to authorized rate.
3. May fix the rate of the tax up to the level authorized by voters by resolution.
4. Electors may petition for election to reduce rate (306.71).
5. Cash register reimbursement required.
6. May specify later effective date in enacting resolution.
7. Special provisions apply when enlarging the jurisdiction of a regional transit authority.

**TABLE 2**  
**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) and (H))

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.

<b>PURPOSE</b>	<b>FIRST PRECEDING FISCAL YEAR FY 19__</b>	<b>SECOND PRECEDING FISCAL YEAR FY 19 ____</b>
Sheriff (excluding detention facilities)		
Operation and maintenance detention facilities		
Construction, acquisition, equipping and repair of detention facilities, including debt service		
Payments 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

**TOTAL**

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

**PURPOSE**

**CURRENT**

**FISCAL**

**YEAR**

**FY**

**19\_\_\_\_\_**

Sheriff (excluding detention facilities)

Operation and maintenance detention facilities

Construction, acquisition, equipping and repair of detention facilities,  
including debt service

Payments 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

**TOTAL**

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.

PURPOSE	PRELIMINARY	PLAN OF EXPENDITURES FROM		
		GENERAL FUND	RESERVE FUND	
	TAX	IMPOSED	TAX NOT IMPOSED	
	FIRST SUCCEEDING FISCAL YEAR	SECOND SUCCEEDING FISCAL YEAR	FIRST SUCCEEDING FISCAL YEAR	SECOND SUCCEEDING FISCAL YEAR
	FY 19_____	FISCAL YEAR	FISCAL YEAR	FISCAL YEAR

YEAR		YEAR
FY	FY	FY
19__	19__	19__
-	-	-

Sheriff (excluding detention facilities)

Operation and maintenance detention facilities

Construction, acquisition, equipping and repair of detention facilities, including debt service

Payments 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

**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 revenue fund assuming the tax is imposed

PURPOSE	FIRST SUCCEEDING FISCAL YEAR	SECOND SUCCEEDING FISCAL YEAR
	FY 19 ____	FY 19 ____
Sheriff (excluding detention facilities)		
Operation and maintenance detention facilities		
Construction, acquisition, equipping and repair of detention facilities, including debt service		
Payments 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

**TOTAL**

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**

\_\_\_\_\_

\_\_\_\_\_

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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 \_\_\_\_\_, 19\_\_\_\_\_.