



## Sales and Use Tax

The sales and use tax is the state's primary source of revenue. It is also an important revenue source for county governments and regional transit authorities, which are authorized to levy sales and use taxes that "piggyback" on the state sales and use tax. The department administers both the state sales and use tax and local piggyback taxes.

The Ohio sales tax dates back to 1934, when the General Assembly enacted a three percent sales tax effective January 1935. The use tax followed a year later. In 1967, the legislature adopted a four percent state rate and, for the first time, authorized county governments to levy piggyback taxes, subject to repeal by a majority vote of the county electorate. In 1974, transit authorities were also granted the authority, with voter approval, to levy piggyback taxes.

The current state sales and use tax rate, 5.75 percent, was established on Sept. 1, 2013. During fiscal year 2015, the tax generated more than \$10.1 billion in revenue. Of that amount approximately 98.2 percent or about \$10.0 billion was distributed to the General Revenue Fund. The balance was distributed to the Public Library Fund and Attorney General Claims Fund.

The department collects the combined state and local piggyback taxes and then distributes the local share of revenue directly to the counties and transit authorities. The same exemptions and exceptions, credits and payment dates apply to the permissive taxes as to the state tax. See **Sales and Use Tax - Counties and Transit Authorities** for a discussion of piggyback taxes.

Ohio is a full member of the Streamlined Sales Tax Project (SSTP). SSTP member states are in compliance with all provisions of the Streamlined Sales and Use Tax Agreement. The Agreement simplifies and modernizes sales tax administration to substantially reduce the burden of tax compliance. Membership makes it easier for persons making sales in multiple states to voluntarily collect and remit sales tax to member states.

### Taxpayer

(Ohio Revised Code 5739.01, 5739.03, 5739.031, 5739.17, 5741.01)

With limited exceptions, the general rule is the sales tax imposed is paid by the consumer to the vendor who collects the tax as a trustee for the State of Ohio. Any person who makes a retail sale subject to tax, or stores, uses, or consumes tangible personal property, or realizes

a benefit in this state of any taxable service on which sales tax has not been paid is required to file a return and remit the sales or use tax due. See **Exhibit 1** for a description of taxpayers and applicable vendor's licenses.

### Tax Base

(R.C. 5739.01, 5741.01)

State, county and transit authority sales and use taxes apply to all retail sales of tangible personal property that are not specifically exempt. The tax also applies to the rental of tangible personal property, the rental of hotel rooms by transient guests and the sales of the following specified services:

- repair of tangible personal property;
- installation of tangible personal property;
- washing, cleaning, waxing, polishing and painting of a motor vehicle;
- laundry and dry cleaning services;
- automatic data processing, computer services and electronic information services used in business;
- telecommunications services;
- lawn care and landscaping services;
- private investigation and security services;
- building maintenance and janitorial services;
- employment services and employment placement services;
- exterminating services;
- physical fitness facility services;
- recreation and sports club services;
- mobile telecommunications services;
- satellite broadcasting services;
- personal care services;
- transportation of persons by motor vehicle or aircraft entirely within this state;
- motor vehicle towing services;
- snow removal services; and
- electronic publishing services.

The tax also applies to all transactions by which:

- a warranty, maintenance or service contract is, or is to be, provided; and all transactions by which tangible personal property is, or is to be, stored;
- health care services are paid for or reimbursed, provided, delivered, arranged for, or otherwise made available by a Medicaid health insuring corporation

**Exhibit 1**

<b>Sales and Use Taxpayers and License, Permit or Account Types</b>		
<b>Taxpayer</b>	<b>Cost of License</b>	<b>Description</b>
Vendor	\$25	Each person or business establishment located in Ohio making retail sales.
Transient vendor	\$25	Retailer who makes sales in any county in which they have no fixed place of business. The license is valid statewide.
Seller	No fee	Retailer located outside of Ohio who makes retail sales of property or services for storage, use or consumption in Ohio.
Direct pay permit holder	No fee	Consumers authorized by the tax commissioner to remit tax directly to the state instead of to the vendor. This authority can only be issued upon application if the commissioner determines that granting the authority would improve compliance and increase the efficiency of the administration of the tax.
Clerks of court	No fee	Dealers remit taxes collected on sales of motor vehicles, watercraft, and outboard motors to county clerks of court when a title is issued. Clerks of court also collect the tax on casual sales of motor vehicles, and sales of watercraft and outboard motors required to be titled. Clerks of court remit these receipts to the state.
JobsOhio Beverage System	No fee	Collects and remits sales tax paid on state-controlled spiritous liquor sold in state-contracted liquor agencies.
Consumers' use tax account	No fee	Purchasers who have not paid the tax to a vendor or seller (in most cases for out-of-state transactions) make payments directly to the state.
Streamlined sales and streamlined use tax accounts	No fee	Remote sellers in any other state that has passed laws conforming to the Streamlined Sales Tax Agreement and that sell their products to customers in Ohio, using the Internet, mail order or telephone, without having a physical presence in Ohio, collect and remit tax on such sales.

pursuant to the corporation's contract with the state, on and after Oct. 1, 2009;

- a specified digital product is provided for permanent use or less than permanent use, regardless of whether continued payment is required.

The use tax base is identical to that of the sales tax. Use tax applies to the storage, use or other consumption in this state of taxable tangible personal property and the benefit realized in this state of any taxable service provided if the vendor did not charge sales tax. For additional information on the use tax, see the discussion in **Rates**, below, under **Sourcing**.

## Rates

(R.C. 5739.02, 5739.021, 5739.023, 5739.025, 5739.026, 5741.02, 5741.021-5741.023)

### State rate

The state sales and use tax rate has been 5.75 percent since Sept. 1, 2013.

### Local rates

Please see the section of this report entitled **Sales and Use Tax – Counties and Transit Authorities** for a discussion of permissive sales and use taxes.

### Rate schedule

A combined sales tax schedule that includes local levies is codified at R.C. 5739.025.

### Sourcing

For taxable sales made by Ohio vendors and delivered to an Ohio consumer, the sales tax rate is based on the location where the vendor receives the order. Sales made by out-of-state vendors are generally sourced to the location where the consumer receives the tangible personal property.

Exceptions include services where the rate is based on the location where the service is received.

Special sourcing rules are in place for certain sales of electronic information services, electronic publishing services and software delivered electronically that are concurrently available for use by the consumer in multiple locations, for certain types of direct mail, for telecommunications services, and for leases.

Generally, the applicable use tax rate for all taxable sales on which no sales tax was paid to the vendor is based on the location of the purchaser.

Effective Jan. 1, 2010, a consumer has no additional use tax liability on the purchase of tangible personal property if the consumer paid sales tax to a vendor, regardless of whether the amount of sales tax invoiced is calculated at the rate where the consumer receives the property or the

rate where the vendor received the order. Consumers do, however, have a liability on purchases made out-of-state, by catalog or via the Internet on which no sales tax has been paid. Taxpayers with an annual consumer's use tax liability exceeding \$1,000 must register for a consumer's use tax account and file returns. Other taxpayers can remit consumer use tax either on state income tax returns or by filing a use tax voluntary payment form.

## Exemptions and Exceptions

(R.C. 5709.25, 5739.01, 5739.011, 5739.02, 5741.02, 6121.16, 6123.041)

The sales and use tax does not apply to:

- copyrighted motion picture films unless solely used for advertising;
- service transactions in which tangible personal property is an inconsequential element for which no separate charge is made except for the services that are specifically taxable (see **Tax Base**);
- the value of motor vehicles traded in on new motor vehicles sold by licensed new motor vehicle dealers;
- tangible personal property or the benefit of a taxable service to be resold in the form received;
- the refundable deposit paid on returnable beverage containers, cartons and cases;
- tangible personal property used or consumed in commercial fishing;
- sales to U.S. government agencies;
- sales to the state or any of its political subdivisions;
- food for human consumption off the premises where sold;
- food sold to students in a dormitory, cafeteria, fraternity or sorority;
- newspapers;
- magazine subscriptions or magazines distributed as controlled circulation publications (exemption for magazine subscriptions repealed as of Jan. 1, 2014);
- motor vehicle fuel subject to the state motor fuel excise tax;
- gas, water and steam delivered through pipes or conduits by a utility company and electricity delivered through wires;
- communications services provided by telegraph companies;
- casual sales except for motor vehicles, titled watercraft and outboard motors, snowmobiles and all-purpose-vehicles;
- sales by churches and nonprofit organizations (except for the sale of motor vehicles) provided that the number of sales does not exceed six days each year;
- transportation of persons or property, except the transportation of persons specifically taxed as a service;
- sales to churches, nonprofit organizations included under Internal Revenue Code (I.R.C.) 501(c)(3), nonprofit scientific research organizations, and to other nonprofit charitable organizations;
- sales to nonprofit hospitals and to those privately held homes for the aged and hospital facilities that are financed with public hospital bonds;
- building and construction material sold to contractors for incorporation into real property constructed for federal, state or local governments; for religious and certain other nonprofit charitable institutions; for horticulture and livestock structures; and for other specified organizations and industries;
- ships and rail rolling stock used in interstate or foreign commerce and material used for the repair, alteration, or propelling of such vessels;
- material, machinery, equipment and other items used in packaging property to be sold at retail;
- all drugs for a human dispensed by prescription; urine and blood testing materials used by diabetics or persons with hypoglycemia; medical oxygen and medical oxygen equipment for personal use; hospital beds for personal use; and epoetin alfa for persons with a medical disease;
- prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment sold by prescription for use by a human;
- emergency and fire protection vehicles used exclusively by nonprofit organizations in providing emergency and fire protection services for political subdivisions;
- sales to nonprofit community centers and to producers offering presentations in music, dramatics, the arts, and related fields to foster public interest and education;
- motor vehicles sold in Ohio to nonresidents for titling and use in most other states and Canada, provided that the other state or province does not collect sales tax from Ohio residents for motor vehicles purchased there or provided that the state offers a credit to their residents for vehicles purchased in Ohio;
- property used in the preparation of eggs for sale;
- sales of property for use in agricultural production;
- property manufactured in Ohio and immediately shipped outside the state for use in retail business, if sold by the manufacturer to the retailer and shipped in vehicles owned by the retailer;
- sales to non-commercial, educational broadcasting stations;
- sales of animals by nonprofit animal shelters and county humane societies;
- items used in preserving, preparing, or serving food, or material used in maintaining or cleaning these items in a commercial food service operation;
- tangible personal property used by holders of exempt facility certificates issued by the tax commissioner in air, noise, or water pollution control facilities or in energy conversion, solid waste energy conversion, or thermal efficiency improvement facilities;

- bulk water for residential use;
  - sales of equipment used in qualified research and development;
  - sales and installation of agricultural land tile and the sale and installation of portable grain bins to farmers;
  - fees paid for the inspection of emission control equipment on motor vehicles;
  - sales, leases, repairs and maintenance of motor vehicles used primarily in providing highway transportation for hire;
  - sales to state headquarters of veterans' organizations chartered by Congress or recognized by the U.S. Department of Veterans Affairs;
  - as defined by federal law, normally taxable food items, such as soft drinks, sold to persons using food stamps;
  - sales of tangible personal property and services used directly in providing a telecommunications service, mobile telecommunications service, or satellite broadcasting service;
  - trade-ins on purchases of new or used watercraft or outboard motors sold by licensed boat dealers;
  - property and labor used to fulfill a warranty or service contract;
  - property used to store and handle purchased sales inventory in a warehouse or similar facility, when the inventory is primarily distributed outside Ohio to retail stores of the person who owns or controls the warehouse, to retail stores of an affiliated group of which the owner of the warehouse is a member, or by means of direct marketing;
  - sales of computer equipment made to qualifying certified teachers and used for educational purposes;
  - sales of certain tangible personal property made to qualified motor racing teams;
  - sales of used manufactured and mobile homes;
  - sales of coin-operated car washes;
  - the provision of self-service laundry or dry cleaning facilities;
  - intrastate transportation of persons by transit bus or ambulance or by a person that holds a Certificate of Public Convenience and Necessity under 49 United States Code 41102;
  - sales of telecommunications services used directly and primarily to perform the functions of a call center;
  - sales of personal property and services used directly and primarily in providing taxable intrastate transportation of persons;
  - repair and replacement parts and repair and maintenance services for aircraft used primarily in a fractional aircraft ownership program;
  - items used in acquiring, formatting, editing, storing and disseminating data or information by electronic publishing;
  - items used in the repair and maintenance of aircraft and avionics systems for aircraft;
  - repair, remodeling, replacement or maintenance services performed on aircraft or on an aircraft's engine, avionics, or component materials or parts;
  - sales of full flight simulators that are used for pilot or flight-crew training and repair and replacement parts or components for such full flight simulators; and repair and maintenance services for full flight simulators.
  - sales to or by a cable service provider, video service provider or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work;
- Also, Ohio law:
- permits a 25 percent sales tax refund for qualified computer purchases for providers of electronic information services;
  - caps at \$800 the sales or use tax on any aircraft sold as a fractional share aircraft; and
  - exempts from the use tax items that are held by a person, but not for that person's own use, and donated to a charitable organization or to the state or its political subdivisions for exclusively public purposes.
- Ohio law also includes direct use and primary use exemptions. The direct use exemption applies to:
- material incorporated as a component part of tangible personal property produced for sale by manufacturing, assembling, processing or refining;
  - material used or consumed directly in the production of tangible personal property by mining, farming, agriculture, horticulture, floriculture, or used in the production of and exploration for crude oil and natural gas;
  - tangible personal property used directly in rendering a public utility service;
  - tangible personal property used or consumed in the preparation for sale of printed and other reproduced material and magazines distributed as controlled circulation publications; and
  - certain property used in making retail sales including: advertising material or catalogs used or consumed in making retail sales that price and describe property; preliminary materials sold to direct marketing vendors that will be used in printing advertising material; printed matter that offers free merchandise or chances to win sweepstakes prizes and includes advertising material; equipment primarily used to

accept orders for direct marketing retail sales; and certain automatic food vending machines.

The primary use exemption refers to tangible personal property used primarily in a manufacturing operation to produce a product for sale. The primary use exemption includes, but is not necessarily limited to, the following items:

- production machinery and equipment that act upon the product being produced;
- handling and transportation equipment (except licensed motor vehicles) used in moving property in or between plants during the production process;
- property used in producing property that is used or consumed in the production of a final product (use on use);
- coke, gas, water, steam and similar substances used in the manufacturing operation;
- catalysts, solvents, water, acids, oil and similar consumables that interact with the product and are an integral part of the manufacturing operation;
- property that is used to control, physically support, or is otherwise necessary for functioning of machinery and equipment and continuation of the manufacturing operation; and
- machinery and equipment, detergents, supplies, solvents and any other tangible personal property located at a manufacturing facility that are used in the process of removing soil, dirt or other contaminants from, or otherwise preparing in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads or other similar items, to be supplied to a consumer as part of laundry and dry cleaning services, only when the towels, linens, articles of clothing, floor mats, mop heads or other similar items belong to the provider of the services.
- ORC section 122.175, allows a taxpayer that proposes a capital improvement project for an eligible computer data center in this state to apply to the tax credit authority to enter into an agreement for a complete or partial sales and use tax exemption on computer data center equipment used at the eligible computer data center.

## Special Provisions

### Cumulative filing (R.C. 5739.12 and Rule 5703-9-09)

The Tax Commissioner may require a vendor that operates from multiple locations or has multiple vendors' licenses to report all liabilities on one consolidated return. Vendors who have two or more places of business in Ohio may, upon approval by the tax commissioner, file a single monthly consolidated return reporting on one form the information that normally is required to be reported from each location.

### Pre-arranged agreements (R.C. 5739.05 and Rule 5703-9-08)

Vendors, such as fast food outlets, whose business is of a nature that keeping records of which sales are taxable and which are exempt would impose an unreasonable burden, may be authorized by the tax commissioner to pay an amount based on a test check conducted to determine the proportion of taxable sales to total sales. Businesses electing this method of payment still collect the tax from customers at the time of purchase.

### Pre-determined agreements (R.C. 5739.05 and Rule 5703-9-08)

Vendors, such as coin-operated vending machine operators, whose business is of a nature that the collection of the tax from consumers would impose an unreasonable burden, may be authorized by the tax commissioner to pay the tax at a pre-determined rate based on an analysis of sales and prices.

### Construction contractors (R.C. 5739.01 and Rule 5703-9-14)

Construction contractors are considered to be the consumers of property incorporated into the construction of or improvement to real property and, thus, are responsible for paying the tax on such property.

### Payment by EFT (R.C. 5739.032, 5739.122, 5741.121)

Vendors are required to remit payment by electronic funds transfer (EFT) in cases where annual liability exceeds \$75,000 per calendar year. Taxpayers required to use this payment method will be notified by the department. Vendors that do not meet the \$75,000 threshold may request authorization by the treasurer of state to remit tax payments by EFT.

### Accelerated tax payment (R.C. 5739.032, 5739.122, 5741.121)

Vendors required to remit tax by EFT are required to make advance payment of 75 percent of each month's anticipated tax by the 23rd day of that month. These vendors are still required to file a return by the 23rd of the next month and pay the balance of their tax due, along with that month's accelerated payment.

## Filing and Payment Dates

(R.C. 5739.031, 5739.12, 5739.17, 5741.12, Rule 5703-9-10)

See **Exhibit 2** for a summary of filing and payment dates.

## Discount

(R.C. 5739.12, 5741.12)

Payments made on or before the due date entitle the vendor to a discount of 0.75 percent of the amount due. (Example: \$5,000 tax due – \$37.50 discount = \$4,962.50 net tax due.)

**Exhibit 2**

Type of Sales Tax Returns and Filing Payment Dates		
Type of Return	Taxpayer	Payment Date
Weekly	Clerks of court	Payment on Friday for taxes collected during the preceding week on motor vehicles, and on watercraft and outboard motors titled.
Semi-monthly	JobsOhio Beverage System	By the 15th day of the month for the tax collected during the last 15 days of the previous month, and by the last day of the month for the tax collected during the first 15 days of the month, on spiritous liquor sold in state-contracted liquor agency stores.
Monthly	Vendors, sellers, transient vendors, direct pay permit holders, consumer use tax accounts, streamlined sales tax accounts, streamlined use tax accounts, delivery vendors	By the 23rd day of the month following the close of the reporting period, which is the previous month. Taxpayers whose annual liability in a prior year exceeded \$75,000 are required to pay by EFT. These same taxpayers are required to make accelerated payments during each month.
Quarterly	Direct pay permit holders, consumer use tax accounts	By the 23rd day of January, April, July, and October for their tax liability during the preceding three months; this method of payment may be authorized for accounts with less than \$5,000 in quarterly tax liability.
Semi-annual	Vendors, sellers, transient vendors, delivery vendors	By the 23rd day of the month following the close of each semi-annual period (pre-determined by filing schedule) for the tax collected during the preceding six-month period; this method of payment may be authorized for vendors and sellers whose tax liability is less than \$1,200 per six-month period.

**Disposition of Revenue****State sales and use tax** (R.C. 5739.21, 5741.03)

See **Chart 1** for a summary of revenue disposition. During fiscal year 2015, the General Revenue Fund (GRF) received approximately 98.2 percent of sales and use tax revenues, and the Public Library Fund (PLF) received approximately 1.8 percent. The amount of state sales tax revenue credited to the PLF varies from year to year based on a fixed percentage of all tax collections into the GRF. One half of each monthly transfer from the GRF to the PLF is credited against the state sales tax portion of GRF revenues.

**Administration**

The Tax Commissioner administers the sales and use tax for the state.

**Ohio Revised Code Citations**

Chapters 306, 307, 351, 5709, 5739, 5741 and 6111.

**Recent Legislation****Am. Sub. H.B. 64, 131st General Assembly**

The Act amended ORC 5739.02(B)(42)(p) to state that sales tax does not apply to sales in which the purpose is to provide a rented motor vehicle to the owner or lessee of a motor vehicle that is being repaired or serviced, if the purchaser is reimbursed for the cost of the rented motor vehicle.

The Act amended ORC 5739.01(II) to specify that taxable building maintenance and janitorial services do not include sanitation services necessary for an establishment described in 21 U.S.Code 608, including slaughtering, meat canning, or similar establishments, for services to comply with that section of the U.S. Code.

The Act amended ORC 5741.01(I) to redefine and expand conditions under which substantial nexus is presumed, and to provide a mechanism whereby a seller may rebut the presumption of substantial nexus. One of the expansions of conditions under which substantial nexus is presumed includes "click-through" nexus, in which the seller enters into an agreement with one or more residents of the state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers to the seller. This referral may occur by a link on a web site, an in-person oral presentation, telemarketing, or otherwise, provided the cumulative gross receipts from sales to consumers referred to the seller by all such residents exceeded ten thousand dollars during the preceding twelve months.

**Am. Sub. S.B. 243, 130th General Assembly**

Section 3 of the Act established a sales tax holiday in which sales and use taxes do not apply to the sale or storage, use, or other consumption of any of the following items occurring on August 7, 8 or 9, 2015: an item of clothing, the price of which is \$75 or less; an item of school supplies, the price of which is \$20 or less; or an item of school instructional material, the price of which is \$20 or less.

**Am. Sub. H.B. 483, 130th General Assembly**

The Act amended ORC 5739.05 to state that, upon application, the commissioner may authorize a vendor to remit sales tax on the basis of a prearranged agreement. The proportions and ratios in a prearranged agreement shall be determined either by a test check conducted by the commissioner under terms and conditions agreed to by the commissioner and the vendor, or by any other method agreed upon by the vendor and the commissioner.

**Am. Sub. H.B. 59, 130th General Assembly**

The Act amended ORC 5739.01(B) to make all transactions by which a specified digital product is provided for permanent use or less than permanent use, included in the definition of “sale” and “selling”; and therefore subject to the sales and use tax. The Act goes on to define a specified digital product in ORC 5739.01(QQQ) as an electronically transferred digital audiovisual work, digital audio work or digital book.

The Act amended ORC 5739.01(B) to exempt sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work.

The Act amended ORC 5739.01(B) to exempt sales of investment metal bullion and investment coins.

The Act amended ORC 5739.02(B) to repeal the exemption of magazine subscriptions from the sales and use tax.

The Act amended ORC section 122.175 to alter the definition of an eligible computer data center, for the purposes of an application to the tax credit authority to enter into an agreement for complete or partial sales and use tax exemption on equipment used at an eligible computer data center.

**Am. Sub. H.B. 153, 129th General Assembly**

The Act created ORC section 122.175, which allows a taxpayer that proposes a capital improvement project for an eligible computer data center in this state to apply to the tax credit authority to enter into an agreement for a complete or partial sales and use tax exemption on computer data center equipment used at the eligible computer data center.

**Recent Court Decisions****Brown v. Levin, 2012-Ohio-5768**

This was a class action suit seeking a refund of sales tax paid on the amount received on motor vehicles traded in as part of the federal “Cash for Clunkers” program. The amount of consideration received from a third party, such as “Cash for Clunkers,” is part of the tax base under Ohio law. The taxpayer asserted that the amount received was

not part of the taxable price and he was due a refund of sales tax paid on that amount. The tax commissioner challenged the complaint on jurisdictional grounds, asserting that the taxpayer must first seek a refund of illegally or erroneously paid sales tax from the Department of Taxation using the statutory procedure provided in R.C. 5739.07. The Tenth District Court of Appeals agreed with the tax commissioner and remanded the case to the Common Pleas Court with instructions to dismiss Brown’s complaint.

**Bay Mechanical & Electrical Corp. v. Testa, 2012-Ohio-4312**

Bay Mechanical, a construction contractor, provided plumbing, piping, HVAC, electrical wiring and other services. In addition to its core employees, it relied on labor provided by employees of Tradesmen International, Inc. and Construction Labor Contractors. The tax commissioner assessed use tax on these purchases finding that the services were taxable employment services. Both the tax commissioner and BTA rejected Bay Mechanical’s claim that the services were not employment services under R.C. 5739.01(JJ)(3).

On appeal to the Supreme Court, Bay Mechanical claimed that the contract language alone was sufficient to establish the exception. In essence, Bay Mechanical’s view was that the mere presence of the words “permanent” and “indefinite” in the contracts established qualification for the exception. Bay Mechanical did not provide any documentation regarding the actual performance of the contract during the audit process. The Court found that the presence of “magic” words does not establish exception. Rather, the Court reiterated the rules it set forth in H.R. Options and Moore Personnel Services, and found that the tax commissioner must review the facts and circumstances to determine if the laborers were in fact permanently assigned. The Court affirmed the BTA’s finding that the summary evidence provided by Bay Mechanical did not support permanent assignment stating, at ¶38:

Given that H.R. Options calls for the consideration of facts-and-circumstances evidence, that the documentation was completely withheld on audit, and that it was not offered as an exhibit at the BTA hearing, we conclude that the BTA did not act unreasonably, arbitrarily, or unconscionably when it disregarded the summary exhibits in spite of the controller’s foundational testimony.

**Gallenstein v. Testa, 2014-Ohio-98**

This case involved the tax commissioner’s assessment of use tax on a 44-foot Sea Ray Sundancer Gallenstein purchased from a private owner in Indiana. The Board of Tax Appeals affirmed the assessment and Gallenstein appealed to the Supreme Court of Ohio asserting that her registration of the boat in Ohio was not sufficient to create a taxable nexus and she met all the requirements of the transient use exception in R.C. 5741.02(C)(4).

The Court agreed with Gallenstein and reversed the assessment holding that:

Registering a boat in Ohio is not the same as being required to register a boat in Ohio because R.C. 1547.531(B) (3) exempts from registration watercraft that have been documented by the United States Coast Guard or its successor as “temporarily transitting.” *Id.* at ¶ 21. (emphasis in original).

In so holding, the Court noted that from 2002 through 2004, Gallenstein, a Kentucky resident, operated her boat in Ohio waters fewer than a dozen times, her principal use was not on Ohio waters and the boat was docked in Indiana.

**Hoffman Properties Limited Partnership v. Testa, BTA Case No. 2011-1372 (April 29, 2014) 2014 WL 2708161**

In this case, the tax commissioner assessed use tax on an irrigation system installed in a golf course. Hoffman asserted that the irrigation system was real property and not subject to use tax. The Board of Tax Appeals (BTA) found that “such specialized irrigation system was designed and installed to address the unique needs associated with the operation of a golf course and to primarily benefit the ongoing business conducted on the land, i.e., the golf course.” Therefore, the BTA affirmed the assessment holding “that the irrigation system purchased by Hoffman does not constitute real property, but is personal property, i.e., a business fixture, and, as such, is subject to tax, pursuant to R.C. 5701.03(B).”

**Refuse Transfer Systems, Inc. v. Levin, BTA Case No. 2009-1710 (Oct. 2, 2013), 2013 WL 6833199**

The tax commissioner assessed use tax on ‘tippers’ used in Refuse Transfer’s business of hauling solid waste. Refuse Transfer appealed to the BTA contending that “[a] tipper is an integral component of the semi-tractor vehicles in this case. Refuse trailers either have a built-in hydraulic lift, or otherwise must be assisted by a tipper machine. Without the tipper, the trailer does not serve the purpose of hauling and delivery [of] the waste.” The BTA rejected Refuse Transfer’s claim holding that “the tipper is used to unload the waste being transported, a function that occurs after the transportation takes place, and as such, remains subject to use tax.”

## History of Major Changes

1934	General Assembly enacts a 3 percent sales tax effective Jan. 1, 1935.
1935	Legislature enacts a companion use tax effective Jan. 1, 1936.
1936	Ohio voters approve a constitutional amendment exempting food for human consumption off the premises where sold.
1962	The use of sales tax stamps is discontinued.

1967	Legislature increases rate to 4 percent and broadens the tax base to include cigarettes and beer.
1971	Cigarettes again become exempt.
1980	State sales tax rate temporarily increased to 5 percent from Jan. 1 through June 30, 1981.
1981	HB 694 increased the state sales tax rate from 4 percent to 5.1 percent. Some vendors claimed the new rate was incompatible with their registers. Subsequently, HB 552 lowered the state rate to 5 percent. Other provisions of HB 694 stand, including broadening the base to again include cigarettes, as well as repairs and other selected services. Other legislation establishes a credit for trade-ins on new motor vehicles.
1983	Tax base broadened to include business data processing services.
1987	Purchases made with food stamps exempted from the tax; long distance telecommunications service made taxable.
1990	Tangible personal property primarily used in manufacturing operations exempted from the tax, replacing a direct use exemption for manufacturers. Also, a credit is established for trade-ins on new or used watercraft.
1991	Tax base broadened to include lawn care, landscaping, private investigation and security services.
1993	Legislature broadens tax base to include building cleaning and maintenance, exterminating, employment agency and personnel supply services as well as memberships in physical fitness facilities and recreation and sports clubs. Exemptions established for qualified property used in research and development and for nonprofit scientific organizations. Vendor discount lowered from 1.5 percent to 0.75 percent of tax collections.
1994	Purchases made by organizations defined under Internal Revenue Code 501(c)(3) exempted.
1997	Sale of personal computers and qualified equipment to licensed and certified teachers exempted.
1999	Sale of used manufactured and mobile homes exempted, effective Jan. 1, 2000.
2000	For the purposes of the sales and use tax, sales of new manufactured or mobile homes are no longer considered motor vehicle sales.
2000	Transient vendor’s license fee reduced from \$100 to \$25. Definition of an exempt casual sale is changed to include items that had been subject to the taxing jurisdiction of another state.

## History of Major Changes - continued

2001	The application of the sales and use tax on certain leased motor vehicles, watercraft, aircraft, and on the lease of tangible personal property by businesses is changed so that the tax is paid upon consummation of the lease.
2002	Refunds allowed to be issued directly to consumers in cases where the consumer illegally or erroneously paid tax to the vendor.
2003	State sales tax rate temporarily increased from 5 percent to 6 percent from July 1, 2003 to June 30, 2005. Vendor discount temporarily increased from 0.75 percent to 0.9 percent during the same period. Also: <ul style="list-style-type: none"> <li>• tax base expanded to laundry and dry cleaning, satellite broadcasting service, personal care services, intrastate transportation of persons by motor vehicle or aircraft, towing service, snow removal and the storage of tangible personal property.</li> <li>• threshold increased for mandatory payment by electronic funds transfer from \$60,000 annual tax liability to \$75,000, and such taxpayers begin paying on an accelerated schedule.</li> <li>• some definitions of food, beverages and medical supplies changed to conform to the provisions of the multistate Streamlined Sales Tax Project.</li> </ul>
2005	State sales tax rate reset to 5.5 percent and temporary vendor discount rate of 0.9 percent extended through June 30, 2007.
2006	Property withdrawn from inventory and donated to a charitable organization exempted from the use tax.
2008	General Assembly enacts HB 429, which allows Ohio to retain origin sourcing for most sales of tangible personal property made by Ohio vendors to Ohio consumers effective Jan. 1, 2010.
2009	Electronic filing of sales tax returns becomes mandatory. General Assembly, in HB 1, applies sales tax to monthly Medicaid premiums received by health insuring corporations in lieu of a former 5.5 percent franchise fee.
2013	State sales and use tax rate increased to 5.75 percent, effective Sept. 1, 2013.
2014	Ohio became a full member of the Streamlined Sales Tax Project.
2015	HB 64 redefines and expands conditions under which substantial nexus is presumed, and provides a mechanism whereby a seller may rebut the presumption of substantial nexus.

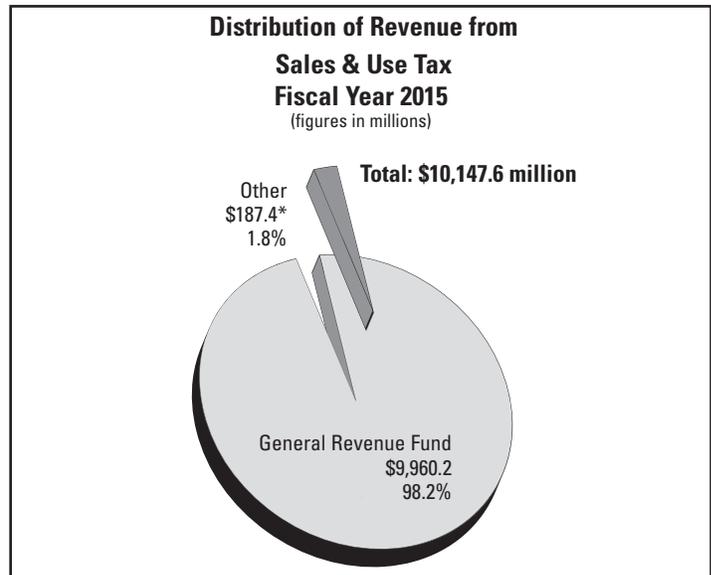
## Comparisons with Other States

(As of June 30, 2015)

This table shows state sales tax rates, the maximum combination of local sales tax rates in effect for each state, and the highest combined state and local sales tax rate in effect for each state.

State	State Rate	Max. Local Rate	Max. Total Rate
Georgia	4.00%	4.00%	8.00%
Indiana	7.00	----	7.00
Kentucky	6.00	----	6.00
Michigan	6.00	----	6.00
North Carolina	4.75	2.75	7.50
Ohio	5.75	2.25	8.00
Pennsylvania	6.00	2.00	8.00
Tennessee	7.00	2.75	9.75
Texas	6.25	2.00	8.25
West Virginia	6.00	1.00	7.00

## Chart



\* Includes Public Library Fund and Attorney General Claims Fund.

Source: OAKS State Financial Accounting

<b>Table 1</b>					
<b>State and Permissive (Local) Sales and Use Tax Collections, by Industrial Classification: July 2014 through June 2015 period<sup>1</sup></b>					
<b>Industrial Classification (North American Industry Classification System)</b>	<b>NAICs codes</b>	<b>Number of Business Entities, Jan. - June 2015<sup>2</sup></b>	<b>July-Dec. 2014 collections</b>	<b>Jan.-June 2015 collections</b>	<b>Total FY 2015 collections</b>
Agriculture, Forestry, and Fishing	111100-115310	1,033	\$2,534,050	\$4,835,981	\$7,370,031
Mining	211110-213110	210	11,588,491	10,307,695	21,896,186
Utilities (excluding telecommunications)	221100-221300	134	28,014,968	106,323,889	134,338,857
Construction	236110-238900	2,751	34,897,754	29,983,293	64,881,047
Manufacturing	311110-339900	11,919	217,056,410	209,781,448	426,837,858
Wholesale Trade	423100-425120	5,348	177,758,981	179,164,174	356,923,154
Retail Trade:					
Motor Vehicle and Parts Dealers <sup>3</sup>	441110-441300	5,563	214,772,077	219,133,458	433,905,535
Furniture and Home Furnishings Stores	442110-442299	3,391	101,964,681	104,552,703	206,517,384
Electronic and Appliance Stores	443111-443130	2,454	165,258,443	174,161,746	339,420,189
Building Material and Garden Equipment & Supplies	444110-444200	6,756	443,000,102	396,182,718	839,182,820
Food and Beverage Stores	445110-445310	6,863	253,532,340	263,313,108	516,845,448
Health and Personal Care Stores	446110-446190	7,071	116,837,395	129,241,605	246,079,000
Gasoline Stations	447100	1,406	86,911,946	84,264,690	171,176,636
Clothing and Clothing Accessories Stores	448110-448320	4,993	186,728,351	203,100,196	389,828,547
Sporting Goods, Hobby, Book, and Music Stores	451110-451220	5,988	105,963,724	111,441,054	217,404,778
General Merchandise Stores	452110-452900	4,463	597,074,299	611,232,750	1,208,307,049
Miscellaneous Store Retailers	453110-453990	24,476	420,041,048	440,871,173	860,912,221
Nonstore Retailers	454110-454390	6,017	92,268,682	111,997,336	204,266,018
Transportation and Warehousing	481000-493100	2,046	16,568,649	39,875,370	56,444,020
Information (including telecommunications)	511110-519100	3,452	405,614,433	417,492,568	823,107,001
Finance and Insurance	522110-525990	498	471,339,281	510,833,339	982,172,619
Real Estate, and Rental & Leasing of Property	531110-533110	3,971	127,487,879	142,051,737	269,539,616
Professional, Scientific and Technical Services	541110-541990	8,341	104,155,402	106,863,476	211,018,878
Management of Companies (Holding Companies)	551111-551112	81	7,121,020	9,343,074	16,464,095
Administrative & Support Services, and Waste Mgmt. & Remediation Services	561110-562000	11,565	219,799,308	208,392,307	428,191,615
Education, Health Care and Social Assistance	611000-624410	3,700	14,578,157	14,991,611	29,569,767
Arts, Entertainment, and Recreation	711100-713900	3,999	38,903,309	32,551,644	71,454,953
Accommodation and Food Services	721110-722515	19,971	468,056,448	450,594,254	918,650,702
Other Services	811110-812990	19,874	144,838,489	149,429,369	294,267,858
Unclassified	n/a	13,809	22,684,855	21,641,615	44,326,470
<b>Total<sup>4</sup></b>		<b>192,143</b>	<b>\$5,297,350,974</b>	<b>\$5,493,949,380</b>	<b>\$10,791,300,353</b>
<b>Collections from Clerks of Court<sup>3</sup></b>			<b>July - Dec. 2014 Collections</b>	<b>Jan. - June 2015 Collections</b>	<b>Total FY 2015 Collections</b>
Collections from sales of motor vehicles			\$809,702,147	\$800,517,649	\$1,610,219,796
Collections from sales of watercraft			7,093,718	8,654,212	\$15,747,930
Subtotal			\$816,795,864	\$809,171,860	\$1,625,967,724
<b>Grand Total</b>			<b>\$6,114,146,838</b>	<b>\$6,303,121,240</b>	<b>\$12,417,268,078</b>
Source: Ohio Department of Taxation					
<sup>1</sup> Industrial classification data reflects the principal business activity of each business entity, generally based on the industrial (NAICs) code indicated on the entity's sales or use tax registration form. In addition, the tax collection data reflected in this table primarily emanates from businesses that operate as vendors or sellers, who collect sales or use taxes from customers and remit such collections to the state. However, some businesses (such as manufacturers) remit the sales or use tax on their taxable purchases directly to the state instead of to their vendors and sellers, usually by means of a direct payment or consumer use tax account. Amounts remitted by entities that have these types of accounts are also included in this table.					
<sup>2</sup> Indicates the number of separate legal entities (not the number of separate locations) that filed and remitted sales or use tax at any time during the January through June 2015 period.					
<sup>3</sup> Tax collections from automobile and watercraft sales are listed separately, and are not assigned an Industrial Category. Such taxes are collected by the county clerks of court and then remitted to the state. Since the information does not come from the remitting entities directly, there is no Industry Category information, or an entity count, associated with the values.					
<sup>4</sup> The data in this table is extracted from sales and use tax returns. The totals in this table do not match actual collections because this table does not include clerks of courts tax collections and because the table does not reflect subsequent adjustments made to tax returns, as well as revenue generated from audit activity.					

<b>Table 2</b>	
<b>Total Sales and Use Tax Collections attributed to membership in Streamlined Sales Tax<sup>1</sup> (Includes State and Permissive Sales and Use Tax Collections) Fiscal Years 2011 - 2015</b>	
<b>Fiscal Year</b>	<b>Total collections attributed to membership in Streamlined Sales Tax<sup>2</sup></b>
2011	\$33,978,942
2012	37,198,356
2013	43,811,607
2014	69,861,947
2015	66,992,782
Source: Ohio Department of Taxation	
<sup>1</sup> The state of Ohio became an associate member of Streamlined Sales Tax on October 1, 2005, and became a full member on Jan. 1, 2014.	
<sup>2</sup> Total collections attributed to Ohio's membership in Streamlined Sales Tax are remitted under a variety of account types. Collections from all known accounts associated with Streamlined Sales Tax are summarized here. However, taxpayers may remit sales and use tax due to Ohio's membership with Streamlined Sales Tax without notifying the Department of Taxation of this distinction.	

<b>Table 3</b>				
<b>Sales &amp; Use Tax Number of Accounts by Type and Payment Schedule (As of June 30, 2015)</b>				
<b>Payment Schedule</b>				
<b>Accounts</b>	<b>Semi-Annual</b>	<b>Monthly</b>	<b>Quarterly</b>	<b>Total</b>
Vendor's	77,696	72,904	0	150,600
Master (accounts issued by the state)	1,113	4,898	0	6,011
Transient <sup>1</sup>	40,180	12,550	0	52,730
Consumers'	0	2,072	18,646	20,718
Direct Pay	0	316	119	435
Out-of-State	7,351	9,835	0	17,186
Streamlined Sales <sup>2</sup>	0	643	0	643
Streamlined Use <sup>2</sup>	0	0	0	0
<b>Totals</b>	<b>126,340</b>	<b>103,218</b>	<b>18,765</b>	<b>248,323</b>
Source: Ohio Department of Taxation				
<sup>1</sup> Service and delivery are no longer separate categories and are included in the transient category.				
<sup>2</sup> A subset of total collections attributed to Ohio's membership in Streamlined Sales Tax are remitted under Streamline Sales and Streamline Use accounts. The remainder of total collections attributed to Ohio's membership in Streamlined Sales Tax are remitted under other account types.				