

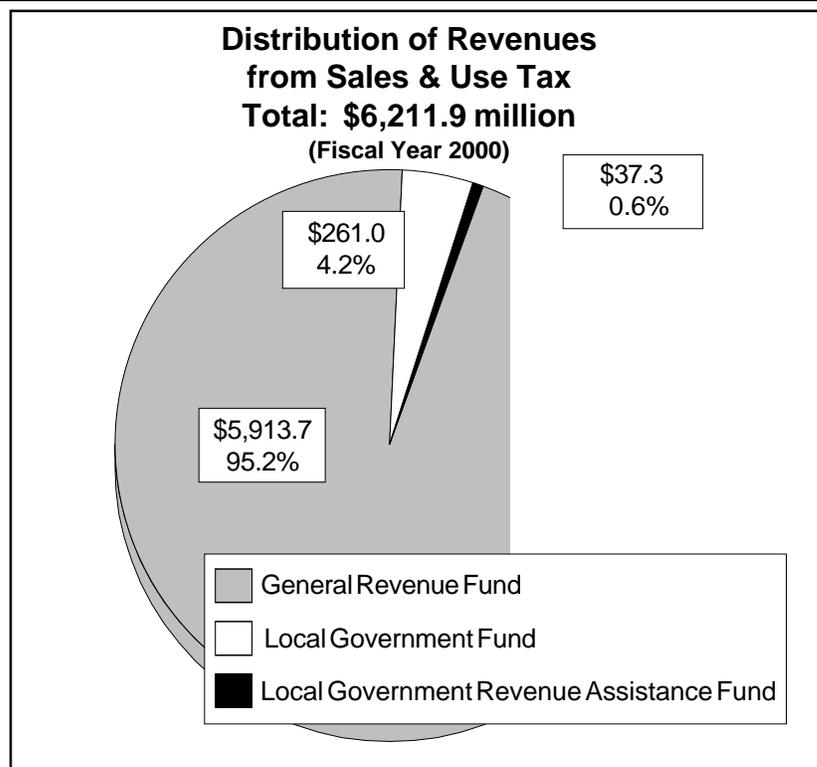
# SALES AND USE TAX

*Note: Permissive sales and use tax information is reported on a calendar-year basis. This information was reported on a fiscal-year basis in annual reports prior to 1991.*

The Ohio sales and use tax went into effect in January 1935. The sales tax rate was 3.0 percent until 1967, when a 4.0 percent rate was adopted. After imposing a temporary 5.0 percent sales tax during the period of January through June 1981, a permanent 5.0 percent rate was adopted in November 1981. The sales and use tax originally was restricted to the sale or rental of tangible personal property, but has been extended to a number of services (see **Exemption and Exceptions, Number 2**).

In 1967 the Ohio General Assembly authorized counties to levy a tax of 0.5 percent in addition to the state sales and use tax for the purpose of providing additional county general revenue. The tax is levied pursuant to a resolution of the county commissioners and is subject to repeal by majority vote of the county electorate. In January 1982, counties were given the option of levying a full 1.0 percent permissive tax. In 1986 the Ohio General Assembly further authorized counties to levy an additional 0.5 percent sales tax subject to voter approval for one or more of the following purposes: (1) payment of bonds issued for a convention facility; (2) revenue for a transit authority; (3) additional county general revenue; (4) revenue for permanent improvements; (5) implementation and operation of a 9-1-1 system. In July 1987, counties and transit authorities were authorized to levy the permissive tax in quarter percent increments. Then, in 1993, the Ohio General Assembly authorized counties to levy the sales tax to provide revenue for the operation and maintenance of a detention facility. As of December 31, 1999, 86 counties in Ohio levied a county permissive tax. In calendar year 1999, the state collected \$1,023.9 million for county governments.

In 1974 the Ohio General Assembly authorized transit authorities to levy a tax to be collected in addition to the state sales and use tax and county permissive tax for the purpose of providing revenues for public mass



transit systems. The tax is levied pursuant to a resolution of the transit authority and subsequent approval by a majority of the voters at a special or general election. The tax can be levied at a rate of up to 1.5 percent in quarter percent increments. As of December 31, 1999, the Greater Cleveland, Central Ohio, LakeTran, Miami Valley, Stark Area and Summit County Metro regional transit authorities levied a permissive sales and use tax. In calendar year 1999, the state collected approximately \$255 million for the transit authorities.

The state collects the combined state and local tax and returns the local share 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. The sales and use tax is the second largest revenue producer for the state, amounting to approximately \$6.2 billion in fiscal year 2000. Of this amount, 4.2% or \$261.0 million is distributed to the Local Government Fund, 0.6% or \$37.3 million to the Local Government Revenue Assistance Fund, and 95.2% or \$5.9 billion is distributed to the General Revenue Fund.

Chart 7, on page 136, shows of the total collections of \$6.2 billion, \$1.1 billion or 17.4% is use tax collections.

In more recent actions the General Assembly enacted statutes changing the way sales tax applies to pre-paid telephone calling cards and manufactured homes. Effective January 1, 2000, pre-paid telephone calling cards and authorization numbers became subject to tax at the time the cards are sold. Under prior law, the tax applied at the time the telecommunications service was rendered. Tax is no longer collected from purchasers of manufactured homes based on sale price. Instead, dealers are required to pay tax based on their cost price of the units. This tax treatment is similar to that which applies to conventionally built homes. Please review the **Exemptions and Exceptions** and **Recent Legislation** sections for more information.

House Bill 612, the Taxpayer Services Bill, became effective September 29, 2000 (**See the Recent Legislation** section for sales tax related items). This bill, among several other sales tax changes, eliminated limited vendor's licenses. Transient vendor's license requirements were expanded to include those vendors that would have been required to have the limited vendor's licenses. The transient vendor's license fee was reduced from \$100 to \$25. The bill also eliminated all vendor's license renewal fees. For a complete list of all the sales tax changes in House Bill 612, please (**See the Legislation** section) in the beginning of this report.

**TAX BASE (R.C. 5739.01, 5741.01):**

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

The county and transit authority use taxes apply to purchases made outside of the state and to purchases made from vendors located in an area which does not have the permissive sales and use tax, or levies it at a lower rate, when the property or service is used in an area that levies a permissive sales and use tax.

**RATES (R.C. 5739.02, 5739.021, 5739.023, 5739.025, 5739.026, 5739.033, 5741.02, 5741.021, 5741.022, 5741.023):**

The state sales and use tax rate is 5.0 percent. Counties and transit authorities are authorized to levy additional

permissive taxes at rates of 0.25 percent to 1.5 percent in quarter percent increments. The applicable sales tax rate for most taxable sales is the location of the vendor. The applicable sales or use tax rate for computer services, telecommunications service, private investigation and security services, and lawn care and landscaping services is the location of the purchaser. Generally, the applicable use tax rate for all taxable sales is based on the location of the purchaser. Following are the number of jurisdictions at each tax rate as of December 31, 1999.

State Rate	Local Rate	Total Rate	Number of Jurisdictions
5.0%	–	5.00%	1 county
5.0	0.25%	5.25	1 county
5.0	0.50	5.50	6 counties
5.0	0.75	5.75	6 counties
5.0	1.00	6.00	41 counties
5.0	1.25	6.25	9 counties
5.0	1.50	6.50	23 counties
5.0	2.00	7.00	1 county

A bracket system is specified in Section 5739.025 of the Revised Code for each of the above rates.

**EXEMPTIONS AND EXCEPTIONS (R.C. 5709.25, 5709.50, 5739.01, 5739.011, 5739.02, 5741.02, 6111.31, 6121.16, 6123.041):**

1. Copyrighted motion picture films unless solely used for advertising;
2. Service transactions in which tangible personal property is an inconsequential element for which no separate charge is made except for the following taxable services:
  - Repair costs, installation costs;
  - Washing, cleaning, waxing, polishing, and painting of a motor vehicle;
  - Cleaning of towels, linens, and clothing used in business;
  - Automatic data processing, computer services and electronic information services used in business;
  - Telecommunication service;
  - Lawn care and landscaping;
  - Private investigation and security;
  - Building maintenance and janitorial services;
  - Employment services;
  - Employment placement services;
  - Exterminating services;
  - Physical fitness facility services;
  - Recreation and sports club services;

3. The value of motor vehicles traded-in on new motor vehicles sold by licensed new motor vehicle dealers;
4. Tangible personal property to be resold in the form received;
5. The refundable deposit paid on returnable beverage containers, cartons, and cases;
6. Tangible personal property used or consumed in commercial fishing;
7. Direct use exceptions:
  - a) Material incorporated as a component part of tangible personal property produced for sale by manufacturing, assembling, processing or refining;
  - b) 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;
  - c) Tangible personal property used directly in rendering a public utility service;
  - d) Tangible personal property used or consumed in the preparation for sale of printed and other reproduced material and of magazines distributed as controlled circulation publications;
  - e) Certain property used in making retail sales including: advertising material or catalogues 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;
8. Tangible personal property used primarily in a manufacturing operation to produce a product for sale. The primary use exception includes, but is not necessarily limited to the following items:
  - a) Production machinery and equipment that act upon the product;
  - b) Handling and transportation equipment (except licensed motor vehicles) used in moving property in or between plants during the production process;
  - c) Property used in producing property that is used or consumed in the production of a final product (use on use);
  - d) Electricity, coke, gas, water, steam, and similar substances used in the manufacturing operation;
  - e) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and are an integral part of the manufacturing operation;
  - f) Property that is used to control, physically support, or is otherwise necessary for functioning of machinery and equipment and continuation of the manufacturing operation;
9. Tangible personal property used or consumed in the surface reclamation of mined land;
10. Sales to U.S. Government agencies;
11. Sales to the state or any of its political subdivisions;
12. Food for human consumption off the premises where sold;
13. Food sold to students in a dormitory, cafeteria, fraternity, or sorority;
14. Newspapers;
15. Magazine subscriptions sent by second class mail or distributed as controlled circulation publications;
16. Motor vehicle fuel subject to the state motor fuel excise tax;
17. Gas, water, steam, and electricity delivered through pipes, conduits or wires by a utility company;
18. Communication services by local telephone and telegraph companies (including cable television);
19. WATS, 800 numbers, and other selected telecommunications services provided by long distance or local service companies;
20. Casual sales except for motor vehicles, titled watercraft and outboard motors, snowmobiles, and all purpose vehicles;
21. Sales by churches, non-profit organizations (excluding motor vehicles) provided that the number of sales does not exceed six days each year;
22. Transportation of persons or property;
23. Sales to churches, non-profit organizations included under Internal Revenue Code 501 (c)(3), non-profit scientific research organizations, and to other non-profit charitable organizations;
24. Sales to non-profit hospitals and to those privately held homes for the aged and hospital facilities that are financed with public hospital bonds;
25. Building and construction material sold to contractors for incorporation into real property con-

- structed for federal, state or local governments; for religious and certain other non-profit charitable institutions; for horticulture and livestock industries; and for other specified organizations and industries;
26. Ships and rail rolling stock used in interstate or foreign commerce and material used for repair, alteration, or propelling such vessels;
  27. Material, machinery, equipment, and other items used in packaging property to be sold at retail;
  28. Drugs prescribed by a licensed practitioner and dispensed by a registered pharmacist; insulin and injection materials used by diabetics; urine and blood testing materials used by diabetics or persons with hypoglycemia; oxygen and oxygen equipment for personal use; hospital beds for personal use; prosthetic devices; ostomy and orthopedic devices; hearing aids; crutches; wheelchairs and wheelchair lifts; and epoetin alfa, used in end stage renal disease;
  29. Emergency and fire protection vehicles used exclusively by non-profit organizations in providing emergency and fire protection services for political subdivisions;
  30. Sales to non-profit community centers and to producers offering presentations in music, dramatics, the arts, and related fields to foster public interest and education;
  31. Motor vehicles sold in Ohio to nonresidents for titling and use outside the state;
  32. Property used in the preparation of eggs for sale;
  33. Sales of property for use in agricultural production;
  34. 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;
  35. Sales to noncommercial, educational broadcasting stations;
  36. Sales of animals by non-profit animal shelters and county humane societies;
  37. Items used in preserving, preparing, or serving food, or material used in maintaining or cleaning these items in a commercial food service operation;
  38. Tangible personal property used in air, noise, or water pollution control facilities by holders of pollution control certificates issued by the Tax Commissioner or the Director of the Ohio Environmental Protection Agency;
  39. Bulk water for residential use;
  40. Tangible personal property incorporated into an energy conversion facility, solid waste energy conversion facility, or thermal efficiency improvement facility certified by the Tax Commissioner;
  41. Sales of equipment used in qualified research and development;
  42. Sales and installation of agricultural land tile and the sale and installation of portable grain bins to farmers;
  43. Fees paid for the inspection of emission control equipment on motor vehicles;
  44. Sales, leases, repairs and maintenance of motor vehicles used primarily in providing transportation for hire;
  45. Sales to state headquarters of veterans organizations chartered by Congress or recognized by the Veterans Administration (Department of Veterans Affairs);
  46. Normally taxable food items sold to persons using food stamps;
  47. Sales of tangible personal property used directly in providing a telecommunication service;
  48. Investment metal bullion and investment coins;
  49. Trade-ins on purchases of new or used watercraft or outboard motors sold by licensed boat dealers;
  50. Property and labor used to fulfill a warranty or service contract;
  51. 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.
  52. Certain motor vehicles used in ride sharing arrangements when the vendor is selling the vehicle pursuant to a contract with the Department of Transportation.
  53. Sales of computer equipment used for educational purposes made to qualifying certified teachers.
  54. Sales of certain tangible personal property made to qualified motor racing teams.
  55. 25% sales tax refund for qualified computer purchases for providers of electronic information service.
  56. Sales of used manufactured and mobile homes are exempt from the sales tax.

**DISCOUNT (R.C. 5739.12, 5741.12):**

Payment on or before the date a return is required to be filed entitles 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.)

**SPECIAL PROVISIONS:**

1. **Cumulative Filing (Rule 5703-9-09):** 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.
2. **Prearranged Agreements (R.C. 5739.05):** Vendors, such as fast food outlets, whose business is of a nature that keeping records of which sales are taxable and which 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.
3. **Prepayment (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 prepay the tax at a rate based on an analysis of sales and prices.
4. **Construction Contractors (R.C. 5739.01):** Construction contractors are considered to be the consumers of property incorporated into the construction of or improvement to real property and, thus, responsible for paying the tax on such property.
5. **Resort Area Tax (R.C. 5739.101 - 5739.105):** Qualified municipal corporations or townships are authorized to levy a tax at the rate of 0.5 percent, 1.0 percent, or 1.5 percent on gross receipts from general sales or intrastate transportation primarily provided to and from the resort area. Receipts from this tax are for the general revenue of the township or municipality. The tax is administered by the Department of Taxation.
6. **Lodging Tax (R.C. 351.021, 5739.02, and 5739.024):** In addition to the state sales tax, municipal corporations, townships, and counties may levy an excise tax on hotel and motel room rentals

at a rate not exceeding 3.0 percent. Total combined local levies cannot exceed 6.0 percent. In certain cases, a portion of the receipts are earmarked for convention centers and visitor bureaus. County Convention Facility Authorities were permitted between June 29, 1988 and December 31, 1988 to enact an additional 4.0 percent lodging tax for convention facility or sports center construction. This tax is in addition to the combined maximum 6.0 percent rate for county, township or municipal lodging taxes, thereby allowing a combined local rate of 10.0 percent.

7. **Payment by Electronic Funds Transfer (R.C. 5731.122):** Payment of tax returns is required to be made by electronic funds transfer in cases where taxpayer's annual liability exceeds \$60,000 per calendar year. Taxpayers required to use this payment method will be so notified by the Tax Commissioner. Taxpayers with lesser liabilities may request the authority to file via electronic funds transfer from the Tax Commissioner.

**TAXPAYER (R.C. 5739.01, 5739.03, 5739.031, 5739.17, 5741.01):**

Any person, retailer, business, organization, etc. making retail sales or making taxable purchases on which the tax has not been paid is required to file a return and remit the tax due.

**DISPOSITION OF REVENUE:**

1. **State Sales and Use Tax (R.C. 5739.21, 5741.03):** The Local Government Fund receives 4.2 percent, the Local Government Revenue Assistance Fund 0.6 percent, and the General Revenue Fund 95.2 percent of sales and use tax collections.
2. **County Permissive Sales and Use Tax (R.C. 5739.21, 5741.03):**
  - a) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying costs of administration;
  - b) Remainder to the county general fund.
3. **County Additional Permissive Sales and Use Tax (R.C. 5739.21, 5741.023):**
  - a) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying costs of administration;

**DESCRIPTION OF TAXPAYERS (R.C. 5739.17):**

<b>Taxpayer</b>	<b>Cost of License</b>	<b>Description</b>
Vendor	\$25	Each person or business establishment located in Ohio making retail sales.
Service vendor	\$25	Person or business that provides automatic data processing, computer services and electronic information services; telecommunications service; lawn care and landscaping services; private investigation, security services, building maintenance and janitorial services, employment placing services, and exterminating services; the license is valid throughout the state.
Transient vendor	\$25	Retailer who makes sales in any county in which they have no fixed place of business. The license is valid throughout the state.
Delivery vendor	\$25	Retailer who maintains no store, showroom, or similar place of business where merchandise is offered for sale, or who has no location where merchandise displayed in catalogs may be selected or picked up by customers.
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	Manufacturers or other consumers who purchase tangible personal property for which the taxable status cannot be determined at the time of purchase; these consumers are authorized to make sales and use tax payments directly to the state.
Clerks of Court	No fee	Dealers remit taxes collected on sales of motor vehicles, manufactured housing, water craft, and outboard motors to county Clerks of Court when a title is issued. Clerks of Court also collects the tax on casual sales of motor vehicles, and sales of watercraft and outboard motors required to be titled. Clerks of Court then remits these receipts to the State.
Division of Liquor Control	No fee	Collects and remits sales tax paid on alcoholic beverages sold in state controlled stores.
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.

**FILING AND PAYMENT DATES (R.C. 5739.031, 5739.12, 5739.17, 5741.12, RULE 5703-9-10):**

<b>Type of Return</b>	<b>Taxpayer</b>	<b>Payment Date</b>
Weekly	Clerks of Court	Payment on Monday for tax collected during the preceding week on motor vehicles titled.
Semi-monthly	Division of Liquor Control	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 alcoholic beverages sold in state control stores or agency stores.
Monthly	Vendors, sellers, service vendors, transient vendors, delivery vendors, direct pay permit holders, consumer use tax accounts	23rd day of the month following the close of the reporting period.
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 service vendors transient vendors delivery vendors	By the 23rd day of the month following the close of each semi-annual period (predetermined 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.
Special Payment Requirements	All taxpayers	Payment must be received by the 23rd day of the month following the close of the reporting period. Taxpayers whose annual liability exceeded \$60,000 will be required to pay by electronic funds transfer.

- b) Remainder to the special purpose fund for which the additional tax is levied.
- 4. **Transit Authority Sales and Use Tax (R.C. 306.31, 5739.21, 5741.03):**
  - a) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying costs of administration;
  - b) Remainder to the general revenue of the transit authority for the purpose of acquiring, constructing, operating, maintaining, replacing, improving, and extending transit facilities.
- 5. **Resort Area Tax (R.C. 5739.102):**
  - a) One percent credited to the state General Revenue Fund for the cost of administering the tax;
  - b) Remainder to the appropriate taxing entity.

#### **OHIO REVISED CODE CITATIONS:**

Chapters 306, 5709, 5739, 5741, 6111.

#### **RECENT LEGISLATION:**

**House Bill 612; effective September 29, 2000 (Taxpayer Services Bill).**

**R.C. 5739** - Changes the definition of exempted casual sales to include items that had been subjected to the taxing jurisdiction of any state.

**R.C. 5739** - Clarifies sales tax treatment of charitable non-profit organizations classified under IRC 501 (c)(3).

**R.C. 5739** - Requires liquor permit holders to have the liquor license in the same name that is on the vendor's license.

**R.C. 5739** - The exemption for certain types of energy systems purchased between August 14, 1979 to December 31, 1985 is repealed, as it no longer applies.

**R.C. 5739 and 5741** - Increase from 60 days to 120 days the amount of time for an instate vendor to provide documentation for an exempt sale in case of audit.

**R.C. 5739** - Eliminates the limited vendor's license. The transient vendor's license is expanded to include

those vendors that previously were required to obtain the limited vendor's license. The transient vendor's license fee is reduced from \$100 to \$25.

**R.C. 5739** - Eliminates all license renewal fees.

**R.C. 5739** - Vendors may transfer their licenses between locations within the same county.

**R.C. 5739** - The temporary immunity from assessments made during a 16 day period in 1981 (when the sales tax rate was temporarily increased from 4.0 percent to 5.1 percent) is repealed, as it no longer applies.

**House Bill 483; effective September 21, 2000.**

**Section 6 (Temporary Law)** - Authorizes the Tax Commissioner to discuss with other states the development of a system to collect and administer sales and use taxes from remote sellers.

**Amended Substitute House Bill 640; effective September 14, 2000.**

**R.C. 5739.02(B)(15)** - Adds labeling and labeling equipment to the exemption for packaging and packaging equipment.

**Substitute Senate Bill 3; effective October 3, 1999 (Electric Deregulation Bill).**

**R.C. 5739.011 and 5739.02** - Makes various changes to sales tax law to accommodate electric utility deregulation. Effective date of these changes is May 1, 2001.

**House Bill 163; effective July 1, 1999.**

**R.C. 5739 and 5741** - Clarifies exemption for the sales of used manufactured and mobile homes granted in Senate Bill 142 (122nd General Assembly) is effective for sales made on or after January 1, 2000. **(Passed in fiscal year 2000)**

**House Bill 283; effective June 30, 1999 (Biennial Budget Bill).**

**R.C. 5741.02** - Use tax exemption for sellers of prescription drugs for drug samples distributed free of charge to doctors, dentists, and certain other medical practitioners, effective July 1, 2001.

**R.C. 5739.31** - Prohibits suspended vendors from acquiring a new vendor's license from the Tax Commissioner.

**House Bill 223; effective June 24, 1999.**

**R.C. 5739.02 and 5739.11** - Changes laws pertaining to licensing of retail food establishments.

**House Bill 657; effective March 30, 1999.**

**R.C. 505.94** - Changes the law that authorizes regulation of the activities of certain transient vendors by boards of township trustees and other local governing bodies.

**Senate Bill 142; effective March 30, 1999.**

**R.C. 5739.02 and 5741.02** - The sales of used manufactured and mobile homes in Ohio made on or after January 1, 2000 are not subject to the sales and use tax. Also, for the purposes of the sales and use tax, sales of a new manufactured or mobile home on or after January 1, 2000 are not considered a motor vehicle sale.

**House Bill 173; effective March 30, 1999.**

**R.C. 5739.01** - Pre-paid authorization numbers used to make phone calls or pre-paid calling cards are subject to sales tax at the point of sale. Telephone service paid for using pre-paid authorization numbers or pre-paid calling cards are not subject to sales tax. These changes are effective January 1, 2000.

**House Bill 39; effective September 16, 1997.**

**R.C. 4505.06** - Authorizes the Clerk of Courts to accept additional methods of payment for the motor vehicle title tax.

**RECENT SIGNIFICANT COURT DECISIONS:**

**Columbus Medical Equipment Inc. v Tracy (Sep, 24, 1999). BTA No. 97-895.**

The BTA held that certain equipment and supplies sold by a medical equipment supplier are exempt under R.C. 5739.02(B)(19): adult diapers, special humidifiers which attach to ventilators, and BIPAP's and CPAP's, which are machines that open airways during sleep.

**Nationwide Mutual Ins. Co. v Tracy (Oct. 15, 1999), BTA No. 98-600.**

The taxpayer contended that its purchases of advertising services and materials for its "Prom Promise" program were exempt as professional services, or that the advertising company was its "true agent" as that term is used in Ohio Adm. Code 5703-9-41. However, the BTA found that the taxpayer had not sustained its burden of

proof on this issue, and, with the exception of one transaction, affirmed the Tax Commissioner's final determination.

**Maxxim Medl, Inc. v Tracy (1999), 87 Ohio St. 3d 337.**

Maxxim sells and leases transcutaneous electrical nerve stimulators (TENS) and neuromuscular stimulators (NMES). The case was remanded to the BTA to determine if the TENS and NMES aided perambulation within the meaning of R.C. 5739.02(B)(19) exempting them from sales tax. The BTA held that such units could be used either in a tax exempt manner or in a taxable manner. Because of multiple uses for the units the BTA held that the appellant must present evidence of the actual use by the end user to qualify the units for the tax exemption. The BTA found that the appellant failed to meet this burden. The Court agreed stating that because the units are not exempt regardless of their use the appellant must collect the tax or provide certificates of exemption or letters of usage to account for the failure to collect the tax.

**TV Fanfare Publications, Inc. v Tracy (1999), 87 Ohio St. 3d 165.**

The appellant organizes various types of advertising promotions. The Court held that production charges for placing advertising materials on shopping carts are taxable, but the charges for the advertising service are not. Also, until July 18, 1990, when Am. S.B. 303 became effective, transactions in which magazines and register tapes were distributed to patrons of grocery stores were taxable, and the appellant should have collected the tax.

**Newfield Publications, Inc. v Tracy (1999), 87 Ohio St. 3d 150.**

The Court, relying on *Union Carbide Corp. v. Limbach (1992), 62 Ohio St.3d 548*, ruled equipment that conveys products to be shipped to packages for placement therein is exempt under the packaging exemption found in R.C. 5739.02(B)(15).

**Associated Paper Stock, Inc. v Tracy (Dec. 10, 1999), BTA No. 98-390.**

The BTA held that the appellant met the statutory requirements of R.C. 5739.01(Z). Accordingly, the appellant's equipment used in its transportation for hire business was exempt from sales tax.

**Wilnet, Inc. v Tracy (Jan. 14, 2000), BTA No. 97-93.**

After examining the evidence the BTA ruled that when the appellant bought a plane in 1991, it intended to use it for business purposes. Therefore, in accordance with *Fliteways, Inc. v Limbach (1981)*, 65 Ohio St.2d 21, the plane was subject to use tax when it came to Ohio in 1992.

**USS/Kobe Steel Co. v Tracy (Jan. 14, 2000) BTA No. 98-731.**

A steel manufacturer objected to the taxation of bins and hoppers used to handle and transport coal and coke. The BTA determined that the coke serves a dual purpose (fuel and raw material). Accordingly, pursuant to R.C. 5739.011(B)(9) the bins at the screening station were exempt. The BTA also found the coal bins exempt from taxation because the bins commit the coal to the manufacturing process. The BTA also ruled that moisture analyzers were exempt from sales tax because they were used to test raw materials. Finally, the appellant established that charges for telecommunication services were electronic information services between members of an affiliated group. The BTA ruled the charges were not subject to tax under R.C. 5739.01(B)(3)(e).

**Memorial Park Golf Club, Inc. v Lawrence (Mar. 31, 2000), BTA No. 99-633.**

The Board concluded that the appellant did not have an agency relationship with the park district, and therefore, had to pay sales tax on equipment and supplies it purchased for the golf course.

**Landmark Plastic Corp. v Lawrence (Mar. 31, 2000), BTA No. 99-499.**

The BTA ruled that the dust collecting equipment was scrap recycling equipment and exempted it from sales tax pursuant to R.C. 5739.09(E) and 5738.011(B). The Board also ruled that cranes used to install tooling and molds are exempted from sales tax because they are necessary for the functioning of production machinery and continuation of its manufacturing operation. R.C. 5739.011(B)(4).

**Bellemar Parts Industries, Inc. v Tracy (2000), 88 Ohio St. 3d 351.**

The Court held that the benefit of the services provided by temporary employees is the labor of those employees not the product of their work. That benefit, combined with the appellant's materials and the labor of permanent employ-

ees created the sold item. The Court then concluded that the appellant was the consumer of the services and could not claim the benefit was resold in the same form. The Court also rejected the idea that the services were "things transferred" in the context of the manufacturing exception found at R.C. 5739.01(E)(9).

**E.T.S., Inc. v Tracy (Apr. 14, 2000) BTA No. 97-1613.**

The BTA concluded that the appellant provided engineering services on a contract basis not employment services within the meaning of R.C. 5739.01(JJ).

**Labor Pool of Cincinnati, Inc., et. al. v Tracy (Apr. 14, 2000), BTA Nos. 98-491 and 98-761.**

Based upon the evidence presented the BTA held that the contracts for employment services did not meet the statutory requirement of one-year duration set in R.C. 5739.01(JJ)(3). The Board did find the exemption certificates valid and reversed the Tax Commissioner's decision to assess the appellant for transactions covered by those certificates.

**Success Employment Service, Inc. v Tracy (Apr. 14, 2000), BTA 98-489.**

The Board held that the provision on leased employees did not constitute the provision of "employment services" pursuant to R.C. 5739.01(JJ)(3). See also, *Labor Pool of Cincinnati v Tracy*.

**Q3 Stamped Metal Inc. v Tracy (Apr. 14, 2000), BTA No. 98-506 (Appealed to the Ohio Supreme Court).**

The Board held contracts for personnel were not subject to sales tax pursuant to R.C. 5839.01(JJ)(3); that a die setting forklift was not subject to sales tax because it was necessary for the functioning of production machinery and the continuation of the manufacturing operation; and that welding glasses, based upon the testimony of an employee, were exempted from sales tax under R.C. 5739.011(B)(4).

**Harsco v Tracy (Apr. 14, 2000), BTA Nos. 98-358 and 98-359.**

The Board ruled that the appellant's manufacturing operation began at the time molten slag is poured into slag pots. Accordingly, the slag pots and repairs to slag pot carriers are exempt from sales/use tax pursuant to R.C. 5739.01(E)(9).

**Laurel Transportation, Inc. v Tracy (Apr. 28, 2000), BTA No. 97-1617. (Appealed to the Ohio Supreme Court).**

The Board ruled that use tax was improperly assessed on an airplane purchased for the purpose of leasing it to others. The Board was persuaded by the management fees paid to a separate company for maintaining the plane and the fact that users had control of the plane, including that right to use a pilot not employed with the management company.

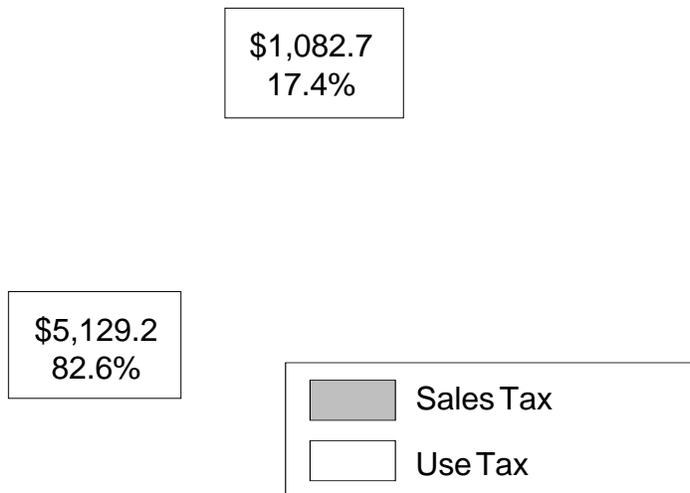
**CWM Resource Recovery, Inc. v Tracy (June 30, 2000), BTA No. 97-811.**

The appellant is in the business of reclaiming and recycling industrial solvents, paint thinners, oils, and other materials for sale. The Board rejected the Department of Taxation's position that the appellant was not primarily engaged in manufacturing. After ruling that the appellant was a manufacturer the Board ruled a number of transactions exempt from sales tax pursuant to various exceptions and exemptions found in Chapter 5739 of the Revised Code.

**Litton Systems, Inc. v Tracy (2000), 88 Ohio St. 3d 568.**

Conveyors and material handling equipment installed in a distribution center are subject to sales tax. The Court rejected the argument that the equipment was a structure erected for permanent use.

**Chart 7  
Revenue from Sales & Use Tax  
by Type of Liability  
Total: \$6,211.9 million  
(Fiscal Year 2000)**



Source: Office of Budget and Management and the Department of Taxation Estimates

**Table 71**  
**Sales and Use Tax -- Collections by Type of Payment,**  
**Fiscal Years 1996-2000**

Type of Payment	1996	1997	1998	1999	2000
Vendors Sales	\$3,466,823,516	\$3,622,896,157	\$3,792,397,760	\$4,046,087,991	\$4,260,589,704
Sellers Use	367,593,278	413,172,231	488,311,778	535,191,290	591,311,219
Direct Payment Sales	175,379,533	171,808,863	184,241,197	196,056,412	215,057,389
Consumers Use	130,977,077	131,810,175	142,152,235	149,679,380	198,852,797
Sales and Use Assessments and Penalties	84,435,788	115,641,053	100,653,475	45,551,707	30,114,792
Attorney General Sales and Use Tax Collections	21,944,423	26,693,961	32,133,003	18,932,551	15,531,839
Liquor Sales by Division of Liquor Control	14,863,457	15,446,292	16,036,456	16,625,627	17,547,457
Watercraft and Outboard Motors	14,045,853	14,547,188	16,032,925	18,198,999	19,858,098
Motor Vehicles and Manufactured Housing	<u>702,528,563</u>	<u>707,684,262</u>	<u>759,249,434</u>	<u>798,745,689</u>	<u>863,082,085</u>
Total	\$4,978,591,488	\$5,219,700,182	\$5,531,208,263	\$5,825,069,646	\$6,211,945,380
County and Regional Transit Authority	<u>\$1,017,990,817</u>	<u>\$1,103,697,721</u>	<u>\$1,184,070,883</u>	<u>\$1,233,834,889</u>	<u>\$1,307,857,820</u>
Grand Total	\$5,996,582,305	\$6,323,397,903	\$6,715,279,146	\$7,058,904,535	\$7,519,803,200

SOURCE: Ohio Office of Budget and Management, Monthly Revenue Report.

**Table 72**  
**Sales and Use Tax -- Number of Accounts, by Type and**  
**Payment Schedule (As of June 30, 2000)**

Accounts	P a y m e n t S c h e d u l e			
	Monthly	Semi-Annual	Quarterly	Total
Vendors	94,515	124,661	—	219,176
Sellers Use	8,969	5,706	—	14,675
Service Vendors	18,024	—	—	18,024
Transient Vendors	4,890	—	—	4,890
Delivery Vendors	2,591	—	—	2,591
Master Accounts	2,225	—	—	2,225
Consumers Use	1,331	—	12,446	13,777
Direct Payment	<u>513</u>	<u>—</u>	<u>248</u>	<u>761</u>
Total	133,058	130,367	12,694	276,119

SOURCE: Department of Taxation.

**Table 73**  
**County and Transit Authority Permissive Sales Tax Collections,**  
**Calendar Years 1995-1999**

County	Tax Rate 12/31/99	A m o u n t o f T a x					Initial Enactment	Most Recent Enactment
		1995	1996	1997	1998	1999		
Adams	1.00 %	\$1,260,875	\$1,242,814	\$1,413,524	\$2,163,846	\$1,714,927	June 1, 1991	Jun 1, 1991
Allen	1.00	10,422,373	10,781,017	11,206,205	11,812,923	12,396,517	May 1, 1970	Jan 1, 1987
Ashland	1.25	3,691,809	3,932,279	3,530,121	4,543,182	4,827,163	Mar. 1, 1971	Jan 1, 1998
Ashtabula	1.00	5,930,909	6,437,684	6,629,584	7,154,163	7,552,178	Apr. 1, 1977	Jul 1, 1985
Athens	1.25	3,967,435	3,969,046	4,294,437	4,487,932	4,739,315	Feb. 1, 1982	Jan 1, 1994
Auglaize	1.50	2,963,649	3,760,771	5,000,697	5,263,802	5,567,391	Nov. 1, 1973	Jun 1, 1996
Belmont	1.50	7,395,112	8,153,581	9,204,244	9,766,623	10,293,024	May 1, 1985	Jan 1, 1995
Brown	1.25	2,214,834	2,053,425	2,093,146	2,401,378	2,573,458	Aug. 1, 1979	Jan 1, 1996
Butler	0.50	8,703,125	11,639,281	12,166,559	13,140,269	14,231,493	June 1, 1985	Feb 1, 1995
Carroll	1.00	1,117,043	726,060	1,292,024	1,364,596	1,486,349	Sep. 1, 1985	Jun 1, 1996
Champaign	1.00	2,026,618	2,136,443	2,008,650	2,358,266	2,428,019	Jan. 1, 1986	Jan 1, 1986
Clark	1.00	10,175,741	10,220,500	14,887,162	11,989,411	11,237,543	Nov. 1, 1972	Feb 1, 1998
Clermont	1.00	12,911,513	14,013,611	14,878,578	15,627,874	17,028,404	Aug. 1, 1979	Oct 1, 1983
Clinton	1.00	2,771,906	3,338,751	3,183,890	3,586,807	3,696,335	May 1, 1972	Nov 1, 1988
Columbiana	0.00	5,651,713	6,157,617	6,141,227	6,719,847	4,092,246	Aug. 1, 1985	Jul 1, 1999
Coshocton	1.00	2,058,669	2,149,884	2,182,933	2,469,656	2,716,038	June 1, 1971	Mar 1, 1985
Crawford	1.50	3,459,892	3,587,959	3,735,806	4,091,500	4,544,496	May 1, 1978	Jul 1, 1994
Cuyahoga	1.00	127,585,181	131,551,234	138,518,444	146,122,594	151,304,357	Sep. 1, 1969	Oct 1, 1987
Darke	1.00	3,344,040	3,517,003	3,579,533	3,757,174	4,015,919	July 1, 1975	Jan 1, 1988
Defiance	1.00	3,070,232	3,427,759	3,640,686	3,947,756	4,156,527	Feb. 1, 1987	Feb 1, 1987
Delaware	1.25	3,085,846	4,344,530	9,641,481	12,043,969	14,453,215	Jan. 1, 1972	Oct. 1, 1996
Erie	1.00	8,499,911	8,886,343	9,192,540	9,674,961	10,173,486	Mar. 1, 1977	May 1, 1993
Fairfield	0.75	5,040,290	6,843,590	7,211,971	7,941,612	9,043,396	Sep. 1, 1981	Aug 1, 1995
Fayette	1.00	3,130,866	3,050,782	3,257,468	3,567,045	3,812,525	Mar. 1, 1983	Jul 1, 1988
Franklin	0.50	60,689,821	63,684,379	68,560,345	72,262,490	79,029,545	Sep. 1, 1985	Sep 1, 1985
Fulton	1.00	2,679,261	3,274,350	3,116,970	3,416,180	3,741,901	May 1, 1972	Feb 1, 1987
Gallia	1.25	2,397,029	2,494,713	2,763,770	3,086,185	3,323,068	Dec. 1, 1981	Feb 1, 1995
Geauga	0.50	4,214,298	4,596,233	4,873,533	3,794,817	3,886,833	Aug. 1, 1987	Feb 1, 1998
Greene	1.00	12,054,992	12,910,887	13,516,983	14,462,120	15,771,384	Mar. 1, 1971	Feb 1, 1987
Guernsey	1.50	3,711,687	3,939,686	4,244,131	4,395,688	4,751,472	Feb. 1, 1971	Aug 1, 1993
Hamilton	1.00	48,985,918	76,692,926	107,312,289	112,601,389	120,294,237	June 1, 1970	Jun 1, 1996
Hancock	0.50	3,524,369	3,763,423	3,892,526	4,334,591	4,519,494	Feb. 1, 1979	Apr 1, 1983
Hardin	1.00	1,493,823	1,523,909	1,645,421	2,310,259	1,964,520	Oct. 1, 1985	Mar 1, 1990
Harrison	1.50	813,548	888,873	872,820	933,654	1,056,460	Dec. 1, 1985	Jun 1, 1994
Henry	1.00	1,748,208	1,883,543	1,789,026	1,918,655	1,970,309	Mar. 1, 1972	Jan 1, 1986
Highland	1.00	2,071,486	2,160,582	2,397,948	2,472,251	2,658,210	May 1, 1979	Mar 1, 1993
Hocking	1.25	1,193,257	1,270,189	1,400,919	1,725,376	1,959,342	Apr. 1, 1979	Jan 1, 1998
Holmes	1.00	3,274,580	3,423,872	3,663,837	3,245,706	3,444,413	July 1, 1977	Jan 1, 1998
Huron	1.50	3,693,237	5,572,093	5,875,584	6,194,310	6,704,027	Feb. 1, 1978	Jan 1, 1996
Jackson	1.50	1,993,623	1,961,005	2,201,431	3,268,022	3,629,450	Apr. 1, 1982	Jan 1, 1998
Jefferson	1.50	6,880,128	7,082,393	6,938,657	7,550,738	7,959,072	June 1, 1973	Nov 1, 1994
Knox	1.00	3,036,660	3,152,081	3,388,716	3,585,887	3,913,759	May 1, 1971	Feb 1, 1994
Lake	0.50	10,933,345	11,322,117	11,899,750	13,446,963	13,467,122	July 1, 1969	Aug 1, 1988
Lawrence	1.50	3,379,365	3,486,572	3,595,027	4,567,930	5,888,298	June 1, 1986	Jun 1, 1998
Licking	1.00	9,796,659	10,380,040	11,140,768	11,925,092	13,270,782	Feb. 1, 1971	Feb 1, 1984
Logan	1.50	3,184,423	3,471,051	4,408,968	5,866,233	\$5,945,219	Jan. 1, 1974	Jul 1, 1997
Lorain	0.75	11,855,332	15,230,079	15,590,022	16,384,424	17,691,695	July 1, 1985	Jul 1, 1995
Lucas	1.25	54,081,470	55,883,230	59,478,972	61,791,354	66,617,121	Feb. 1, 1971	Jan 1, 1993
Madison	1.25	2,040,244	2,108,427	2,352,627	2,442,148	3,084,714	Mar. 1, 1983	Jul 1, 1999
Mahoning	0.50	20,691,623	21,110,822	17,031,998	13,166,020	12,506,251	Apr. 1, 1980	Jan 1, 1998
Marion	1.00	4,937,018	4,983,734	5,270,797	5,575,083	5,802,959	Sep. 1, 1985	Apr 1, 1992
Medina	0.50	5,185,537	5,588,402	6,048,897	6,537,994	7,173,100	Apr. 1, 1971	Apr 1, 1971
Meigs	1.00	973,001	997,002	1,029,520	1,107,462	1,194,290	Feb. 1, 1987	Feb 1, 1987
Mercer	1.00	2,525,876	2,616,465	2,731,718	2,921,555	3,051,125	Nov. 1, 1971	Jul 1, 1987
Miami	1.00	9,634,765	9,786,063	10,347,642	10,787,022	10,662,813	Dec. 1, 1969	Nov 1, 1999
Monroe	1.50	1,246,011	1,323,342	1,181,438	1,132,113	1,207,193	Oct. 1, 1986	Nov 1, 1994

-Continued on Page 139

**Table 73 (continued)**  
**County and Transit Authority Permissive Sales Tax Collections,**  
**Calendar Years 1995-1999**

County	Tax Rate 12/31/99	A m o u n t o f T a x					Initial Enactment	Most Recent Enactment
		1995	1996	1997	1998	1999		
Montgomery	1.00 %	\$54,439,135	\$55,061,961	\$57,843,530	\$59,291,722	\$62,860,529	Jan. 1, 1971	Jul 1, 1989
Morgan	1.50	805,520	866,304	908,705	946,914	1,000,399	Feb. 1, 1972	Apr 1, 1990
Morrow	1.50	869,654	1,677,313	1,766,564	1,877,688	2,080,515	July 1, 1971	Jul 1, 1995
Muskingum	1.50	9,885,323	10,290,305	10,936,702	11,729,991	12,556,814	May 1, 1971	Apr 1, 1993
Noble	1.50	640,823	700,316	727,292	727,276	835,295	Jan. 1, 1971	Feb 1, 1995
Ottawa	1.00	3,326,436	3,373,276	4,390,143	4,141,994	4,279,923	Oct. 1, 1973	Jan 1, 1998
Paulding	1.50	1,194,892	1,283,070	1,359,136	1,436,320	1,840,801	Apr. 1, 1984	Nov 1, 1991
Perry	1.00	1,130,244	1,178,447	1,256,215	1,355,682	1,470,176	Mar. 1, 1971	May 1, 1982
Pickaway	1.00	4,343,450	4,392,993	4,207,654	4,240,365	3,289,231	Oct. 1, 1983	Oct. 1, 1998
Pike	1.00	2,017,035	1,581,688	1,659,026	1,952,003	2,129,841	May 1, 1988	May 1, 1988
Portage	1.00	10,757,297	11,817,659	12,567,749	13,589,691	14,601,152	Apr. 1, 1971	Dec. 1, 1999
Preble	1.50	3,152,197	3,169,901	3,506,551	3,435,149	3,722,785	Nov. 1, 1979	May 1, 1994
Putnam	1.00	1,659,019	1,766,734	2,017,394	2,254,047	2,198,501	Jan. 1, 1974	Jun 1, 1987
Richland	1.25	8,698,339	9,018,849	9,367,218	9,770,903	14,132,541	June 1, 1979	May 1, 1999
Ross	1.50	7,697,917	8,240,819	8,792,844	9,034,923	9,413,899	Jan. 1, 1980	Oct 1, 1993
Sandusky	1.00	5,332,603	4,392,838	4,621,062	4,987,986	5,207,216	Aug. 1, 1979	Aug 1, 1995
Scioto	1.00	4,423,787	4,727,903	4,940,917	5,137,617	5,320,502	May 1, 1979	Apr 1, 1987
Seneca	1.00	3,444,017	3,653,614	3,751,383	3,905,937	4,126,466	Oct. 1, 1983	Jul 1, 1988
Shelby	1.50	4,953,685	5,404,508	5,512,196	5,828,457	6,172,722	Mar. 1, 1971	Jan 1, 1998
Stark	0.00	6,481,589	16,078,643	17,223,713	18,358,904	11,845,685	Jan. 1, 1987	Jul 1, 1999
Summit	0.50	46,884,978	26,468,140	28,200,093	29,677,644	30,544,906	Mar. 1, 1973	Nov 1, 1995
Trumbull	0.50	12,548,091	12,961,433	13,414,572	14,039,304	12,376,412	June 1, 1985	Jun 1, 1999
Tuscarawas	1.00	8,582,396	8,760,511	9,114,475	8,911,794	8,365,581	Apr. 1, 1971	Jul 1, 1998
Union	1.00	3,134,615	3,336,304	3,943,913	4,138,690	4,590,268	Apr. 1, 1989	Apr 1, 1989
Van Wert	1.50	2,624,521	2,661,032	2,897,091	3,261,252	3,314,168	Mar. 1, 1972	Mar 1, 1991
Vinton	1.50	531,746	565,072	601,133	640,150	675,798	May 1, 1985	Mar 1, 1992
Warren	1.00	10,599,644	11,732,405	13,117,013	15,640,249	17,402,616	Jan. 1, 1972	Jan 1, 1992
Washington	1.50	6,635,804	6,927,591	7,006,777	7,544,000	7,906,355	Oct. 1, 1983	Jan 1, 1990
Wayne	0.75	5,728,867	5,921,452	6,216,043	6,874,245	7,052,063	Mar. 1, 1971	Jan 1, 1992
Williams	1.00	2,542,433	2,653,625	2,823,337	2,987,960	3,128,191	Dec. 1, 1977	Apr 1, 1986
Wood	1.00	8,921,641	9,328,180	10,273,209	10,906,264	11,770,403	June 1, 1971	Nov 1, 1987
Wyandot	1.00	<u>1,157,154</u>	<u>1,270,833</u>	<u>1,326,893</u>	<u>1,446,498</u>	<u>1,516,358</u>	Feb. 1, 1985	Jan 1, 1988
County Total		\$790,545,028	\$845,748,162	\$925,744,502	\$975,278,513	\$1,023,952,612		
Cleveland RTA	1.00							
(Cuyahoga County)		\$127,771,200	\$131,772,627	\$138,654,205	\$146,188,752	\$151,405,646	Oct. 1, 1975	Oct 1, 1975
Central Ohio TA	0.25							
(Franklin County)		30,565,957	31,900,177	34,516,266	36,445,397	40,163,579	Sep. 1, 1980	Feb 1, 1990
LakeTranRTA	0.25							
(Lake County)		5,453,031	5,648,412	5,923,447	6,718,866	6,731,568	Aug. 1, 1988	Aug 1, 1988
Miami Valley TA	0.50							
(Montgomery County)		27,162,905	27,721,134	28,925,064	29,679,763	31,445,584	July 1, 1980	Jul 1, 1980
Stark Area RTA								
(Stark County)		0	0	3,600,305	9,071,557	9,876,829	July 1, 1997	Jul 1, 1997
Metro TA	0.25							
(Summit County)		<u>12,731,595</u>	<u>13,133,804</u>	<u>13,977,569</u>	<u>14,800,821</u>	<u>15,283,091</u>	Feb. 1, 1991	Feb 1, 1991
Transit Authority Total		<u>\$203,684,687</u>	<u>\$210,176,154</u>	<u>\$225,596,856</u>	<u>\$242,905,157</u>	<u>\$254,906,296</u>		
GRAND TOTAL		\$994,229,715	\$1,055,924,316	\$1,151,341,358	\$1,218,183,670	\$1,278,858,908		

Note: Some counties and transit authorities have repealed and then re-enacted the tax, or have changed the tax rate since the first enactment.

Source: Department of Taxation.