

# SALES AND USE TAX

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he 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 was originally 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 permissive Sales and Use 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 a majority vote of the county electorate.

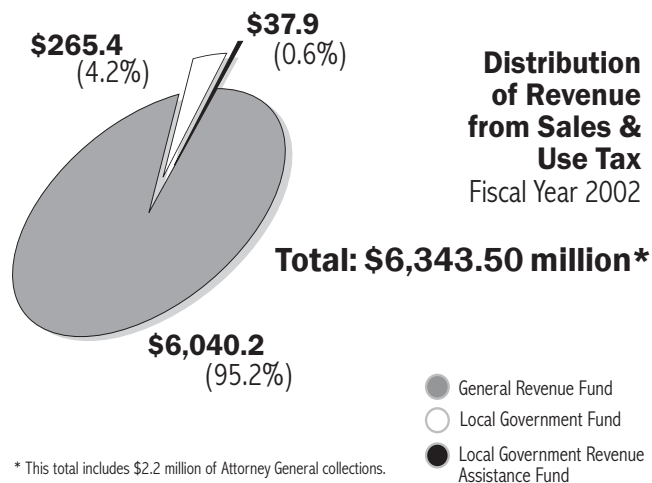
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In January 1982, counties were given the option of levying a full 1.0 percent permissive tax. In 1986, the Ohio General Assembly further authorized counties to levy an additional 0.5 percent Sales tax subject to voter approval for one or more of the 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; and (5) implementation and operation of a 9-1-1 system. If the additional levy is solely for general revenue, the county commissioners may levy it pursuant to a resolution, but it is subject to repeal by a majority vote of the county electorate.

In July 1987, counties and transit authorities were authorized to levy the permissive Sales and Use 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. Legislation in 1997 authorized the use of the additional county Sales tax for construction or renovation of a sports facility, and acquisition of agricultural easements was added in 2001.

As of December 31, 2001, 87 counties in Ohio levied a county permissive Sales and Use tax. In Calendar Year 2001, the state collected \$1,071.9 million for county governments.

In 1974, the Ohio General Assembly authorized transit authorities to levy a permissive Sales and Use tax to be collected in addition to the state Sales and Use tax and county permissive Sales and Use tax for the purposes 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, 2001, 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 2001, the state collected approximately \$264.8 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, exceeding \$6.3 billion in Fiscal Year 2002. Of this amount, 4.2 percent or \$265.4 million is distributed to the Local Government Fund, 0.6 percent or \$37.9 million to the Local Government Revenue Assistance Fund, and 95.2 percent or \$6.0 billion is distributed to the General Revenue Fund.

In more recent action, the General Assembly passed Senate Bill 143 (see the **Recent Legislation** section), which adopted the Simplified Sales and Use Tax Act. This bill allows Ohio to participate with other states in the Streamlined Sales Tax System. The streamlined system is a multi-state effort to make the states' Sales and Use tax laws more uniform and to provide simplified registration, reporting and remittance requirements.

## TAX BASE (R.C. 5739.01, 5747.01):

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 Sales and Use 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 automatic data processing, computer services, electronic information services, telecommunications service, private investigation and security services, lawn care and landscaping services, building maintenance and janitorial services, employment services, employment placement services, and exterminating 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. The following are the number of jurisdictions at each tax rate as of December 31, 2001.

State Rate	Local Rate	Total Rate	Number of Jurisdictions
5.0%	—	5.00%	0 county
5.0	0.25%	5.25	1 county
5.0	0.50	5.50	5 counties
5.0	0.75	5.75	6 counties
5.0	1.00	6.00	38 counties
5.0	1.25	6.25	10 counties
5.0	1.50	6.50	27 counties
5.0	2.00	7.00	1 county

A bracket system is specified in R.C 5739.025 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:
  - 1) Repair costs, installation costs;
  - 2) Washing, cleaning, waxing, polishing, and painting of a motor vehicle;
  - 3) Cleaning of towels, linens, and clothing used in business;
  - 4) Automatic data processing, computer services and electronic information services used in business;
  - 5) Telecommunications service;
  - 6) Lawn care and landscaping;
  - 7) Private investigation and security;
  - 8) Building maintenance and janitorial services;
  - 9) Employment services, employment placement services;
  - 10) Exterminating services;
  - 11) Physical fitness facility services;

- 12) Recreation and sports club services; and
- 13) Mobile telecommunications service.
3. The value of motor vehicles traded-in on new motor vehicles sold by licensed new motor vehicle dealers;
4. Tangible personal property or the benefit of a taxable service to be re-sold 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:
  - 1) Material incorporated as a component part of tangible personal property produced for sale by manufacturing, assembling, processing, or refining;
  - 2) 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;
  - 3) Tangible personal property used directly in rendering a public utility service;
  - 4) 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
  - 5) 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:
  - 1) Production machinery and equipment that act upon the product;
  - 2) Handling and transportation equipment (except licensed motor vehicles) used in moving property in or between plants during the production process;
  - 3) Property used in producing property that is used or consumed in the production of a final product (use on use);
  - 4) Coke, gas, water, steam, and similar substances used in the manufacturing operation;
  - 5) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and are an integral part of the manufacturing operation; and
  - 6) 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 or magazines distributed as controlled circulation publications;
16. Motor vehicle fuel subject to the state Motor Fuel Excise tax;
17. Gas, water, and steam delivered through pipes or conduits by a utility company;
18. Communications 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 and 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 constructed for federal, state or local governments; for religious and certain other non-profit charitable institutions; for horticulture and livestock structures; 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 material 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 non-residents 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 non-commercial, 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 U.S. 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 telecommunications 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. Twenty-five percent sales tax refund for qualified computer purchases for providers of electronic information services; and
  56. Sales of used manufactured and mobile homes.

### 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. Pre-arranged 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 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.

**3. Pre-payment (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.

**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, are 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 visitors 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 a 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. Note: House Bill 94 (124<sup>th</sup> General Assembly, FY 2002/FY 2003 Biennial Budget Bill) temporarily replaces the revenue distribution described below. During each month of the July 2001 – May 2002 period, the Local Government Fund and the Local Government Revenue Assistance Fund will receive the same amount they each received during the corresponding month of the July 2000 – May 2001 period. In June 2002 and June 2003, the funds will receive the same amount they received in June 2000.

**2. County Permissive Sales and Use Tax (R.C. 5739.21, 5743.03):**

- 1) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying costs of administration;
- 2) Remainder to the county general fund.

**3. County Additional Permissive Sales and Use Tax (R.C. 5739.21, 5741.03):**

- 1) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying costs of administration;
- 2) 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):**

- 1) One percent credited to the Local Sales Tax Administrative Fund for the use of the Tax Commissioner in defraying the costs of administration;
- 2) 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):**

- 1) One percent credited to the state General Revenue Fund for the cost of administering the tax;
- 2) Remainder to the appropriate taxing entity.

**TABLE 1: Sales and Use Tax – Collections By Type of Payments (Inclusive of State And Local Permissive Tax) For Fiscal Year 2002**

Vendors Sales	\$5,326,787,457
Motor Vehicle and Water Craft (from Clerks of Court)	1,191,879,339
Sellers Use	709,134,700
Consumers Use	242,928,359
Direct Payment	211,735,835
Liquor Sales by Division of Liquor Control	19,562,227
Attorney General Sales and Use Tax Collections	16,698,251
<b>TOTAL</b>	<b>\$7,718,726,168</b>

Source: Ohio Department of Taxation records and Office of Budget and Management's Monthly Accounting Reports. Figures represent gross collections and therefore include collections from assessments and penalties. Refunds are not subtracted out. Figures are prior to any distribution to any state fund or to county and permissive transit authorities.

**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 services; mobile telecommunications services; lawn care and landscaping services; private investigation and security services; building maintenance and janitorial services; employment and employment placement 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 catalogues 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, 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.
Division of Liquor Control	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.





**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 taxes collected during the preceding week on motor vehicles, watercraft and outboard motors titled.
Semi-monthly	Division of Liquor Control	By the 15 <sup>th</sup> 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, service vendors, transient vendors, delivery vendors, direct pay permit holders, consumers use tax accounts	By the 23 <sup>rd</sup> day of the month following the close of the reporting period.
Quarterly	Direct pay permit holders, consumers use tax accounts	By the 23 <sup>rd</sup> 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 23 <sup>rd</sup> 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.
Special Payment Requirements	All Taxpayers	Payment must be received by the 23 <sup>rd</sup> day of the month following the close of the reporting period. Taxpayers whose annual liability exceeds \$60,000 will be required to pay by Electronic Funds Transfer.

**Table 2: Sales and Use Tax – Number of Accounts, by Type and Payment Schedule (As of June 30, 2002)**

<b>Accounts</b>	<b>Payment Schedule</b>			
	<b>Monthly</b>	<b>Semi-Annual</b>	<b>Quarterly</b>	<b>Total</b>
<b>Vendors</b>	86,971	115,433		202,404
<b>Sellers Use</b>	7,616	6,824		14,440
<b>Service Vendors</b>	9,638	8,495		18,133
<b>Transient Vendors</b>	2,776	19,442		22,218
<b>Delivery Vendors</b>	979	3,018		3,997
<b>Master Accounts</b>	2,211	117		2,328
<b>Consumers Use</b>	1,139		12,466	13,605
<b>Direct Pay</b>	397		348	745
<b>Total</b>	111,727	153,329	12,814	277,870

**OHIO REVISED CODE CITATIONS:**

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

**RECENT LEGISLATION:****House Bill 518; Effective September 6, 2002.**

**R.C. 5739.09** — Authorizes the boards of county commissioners of those counties that levy an excise tax on lodging to increase those taxes by a maximum of 3.5 percent. The additional excise tax is to be used exclusively for county convention facilities.

**Senate Bill 200; Effective September 6, 2002.**

After July 31, 2002, mobile telecommunications service that is or is to be provided when that service is situated to this state pursuant to the "Mobile Telecommunications Sourcing Act," Public Law No. 106-252, 114 Stat. 626 to 632 (2000), 4 U.S.Code Annotated 116 to 126, as amended, is subject to Ohio Sales tax.

Expands eligibility for permits to pay Sales tax directly to the state whenever the Tax Commissioner has determined compliance and efficiency would be increased.

Allows refunds to consumers or vendors, rather than to vendors exclusively, of erroneously paid sales taxes.

Revises the procedures for submitting petitions for reassessment.

**House Bill 524; Effective June 28, 2002.**

**R.C. 5739.01, 5741.01** — Revises the definition of "lease" for purposes of the "up-front" Sales tax on leases (see H.B. 405, below). Under H.B. 524 a lease is a transfer for consideration of possession and the right to use tangible personal property for a period greater than 30 (formerly 28) days.

**Senate Bill 143; Effective March 22, 2002.**

Enacts the Simplified Sales and Use Tax Administration Act, a model multi-state streamlined method of administering the Sales and Use taxes of the participating states.

**House Bill 405; Effective December 13, 2001.**

**R.C. 5739.01, 5741.01** — Changes the price, or the taxable base, on leases of motor vehicles designed to carry a load of one ton or less, watercraft, outboard motors, aircraft, and tangible personal property used in business for which Sales tax is due "up-front," upon consummation of the lease on the entire consideration for the leased property.

**House Bill 94; Effective September 6, 2001 (Biennial Budget Bill).**

**R.C. 5739.01** — Excludes coin-operated pay telephone service from the definition of a taxable telecommunications service.

**R.C. 5739 and 5741; Effective January 1, 2002.**

All functions normally associated with the Treasurer of State, including the receipt of tax payments, are transferred to the Tax Commissioner.

**R.C. 5739.024; Effective September 6, 2001.**

Limits the interest on lodging taxes, and states that the local taxing authority may include establishments with less than five rooms in the definition of hotel.

**Section 140 (Temporary Law); Effective July 1, 2001.**

Temporarily replaces the revenue distribution of the state Sales and Use

tax. Basically maintains the funding of the Local Government Fund and the Local Government Revenue Assistance Fund at Fiscal Year 2001 levels. Please see the **Disposition of Revenue** section for details.

**Senate Bill 310; Effective January 4, 2001.**

**R.C. 5739.024** — Authorizes the financing of educational and performing arts facilities by a port authority through surplus county lodging tax revenue and bonds.

**House Bill 138; Effective November 3, 2000.**

**R.C. 5739.02** — Exempts sales of fire protection and emergency vehicles and equipment, used solely for such services, to non-profit organizations that provide trauma care and emergency medical services. (Those items sold to non-profit fire protection and emergency services are currently exempt).

**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 I.R.C. 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** — Increases from 60 days to 120 days the amount of time for an in-state 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.

**RECENT SIGNIFICANT COURT DECISIONS:****Q3 Stamped Metal, Inc. v. Thomas M. Zaino, Tax Commissioner (2001), 92 Ohio St. 3d 493.**

The Ohio Supreme Court held that forklift trucks used to remove and replace dies on metal stamping machines were not exempt as equipment that is "otherwise necessary for the . . . continuation of the manufacturing operation" under R.C. 5739.011(B)(4). The presses were not in operation when the dies were changed. Therefore, the forklifts were not used to change dies "during the manufacturing process" as required by the statute. The Court found that welding helmets and goggles were equipment used during the manufacturing operation and were necessary for the manufacturing operation to continue. These items qualified for exemption under R.C. 5739.011(B)(4).

**Appleton Papers, Inc. v. Roger W. Tracy, Tax Commissioner (October 5, 2001), Board of Tax Appeals Case No. 98-1444.**

The Board of Tax Appeals ruled that air conditioning equipment for the taxpayer's drive rooms did not qualify for exemption as "tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur," under R.C. 5739.011(C)(5). The drive rooms contained electrical equipment used to control production machinery. The Board did not find evidence sufficient to establish that the drive rooms were completely isolated from the rest of the facility or that the regulation of the environment in those rooms was total. Furthermore, the Board stated the taxpayer had not shown the regulation of the environment in the drive rooms was necessary for production to occur. The Board also found a fly ash system, used to collect light, airborne particles generated by a coal-fired boiler, was taxable as tangible personal property used for waste disposal.

**Akron Management Corp. v. Zaino (2002), 94 Ohio St. 3d 101.**

The case involved two types of refundable charges made by country clubs to incoming members. Some of the country clubs charged an initiation deposit, which was structured as an interest-free 30-year loan to the club. If a member resigned from the club, the initiation deposit was refundable to the member. Other clubs required the members to purchase an equity interest in the club, which was to be resold to the club if the member resigned or otherwise left the club. The Ohio Supreme Court ruled that these charges were payments required as a condition precedent to membership in the clubs. Therefore, the charges were taxable as part of the transaction by which membership in the club is granted under R.C. 5739.01(NN).

**Basic Distribution Corp. v. Ohio Department of Taxation (2002), 94 Ohio St. 3d 287.** The case involved a complaint brought under R.C. 5703.54 (the Taxpayer's Bill of Rights). The Ohio Supreme ruled that R.C. 5703.54 provides an independent cause of action and the taxpayer did not have to exhaust administrative remedies before bringing an action under that section. However, an action under R.C. 5703.54 must be based on a "frivolous disregard" of specific Revised Code provisions, or of the Tax Commissioner's rules, that cannot be supported in law. A dispute over the Department's interpretation of a statute cannot be the basis of an action under that section. The Court ruled that the facts in this case did not support a claim that the Department engaged in any activity for which a remedy is provided under R.C. 5703.54.

**Rumpke Container Service, Inc. v. Zaino (2002), 94 Ohio St. 3d 304.**

The Ohio Supreme Court ruled that a trash hauler was not engaged in "highway transportation for hire" within the meaning of R.C. 5739.01(Z) and was not entitled to claim exemption under R.C. 5739.02(B)(32) on purchases of trucks, truck parts and containers. The Court found that the U.S. Department of Transportation number the taxpayer held was merely an identification number and not a "permit or certificate . . . to engage in transportation of personal property belonging to others" as required by R.C. 5739.01(Z)(1). Furthermore, the Court held that the waste being transported to a landfill is not "personal property belonging to others." The waste has no value and the generators of the waste relinquish control of the waste when it is removed by the taxpayer.

**B.J. Alan Co. v. Tracy and Diamond Sparkler Manufacturing Co. v. Tracy (March 1, 2002), BTA Nos. 99-196 and 99-197.**

The BTA denied exemption for the taxpayer's purchase of discount cards which the taxpayers gave to their customers. The Board found that these items were not items used directly in making retail sales that consist of "newspaper inserts, catalogues, coupons, flyers, gift certificates or other advertising material that prices and describes tangible personal property offered for retail sale." The discount cards did not price and describe property offered for sale and did not meet the criteria for exemption under R.C. 5739.02(B)(37)(a). The Board held that the rental of trailers to store inventory was not entitled to the warehousing exception under R.C. 5739.01(E)(12). That exemption only applies if the stored inventory is primarily to be distributed outside the state to retail stores of the person who owns or controls the inventory. There was no evidence to show that was the case. The Board found no evidence to show what percentage of the pallet wrap purchased by the taxpayer was used to form packages that restrain movement of the product in more than one plane. Therefore, the Board denied the taxpayer's claim that the pallet wrap was exempt as packaging material under R.C. 5739.02(B)(15). Finally, the Board allowed exemption for employment services purchased by the taxpayer. The Board found the services were excepted by R.C. 5739.01(JJ)(3) which excludes from the definition of a taxable employment service, "Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis." The fact the contract contained an escape clause that allowed the parties to cancel the contract before the expiration of the one-year term did not make the contract term less than one year.

**Corporate Staffing Resources, Inc. v. Zaino (2002), 95 Ohio St. 3d 1.**

The taxpayer provided computer technicians to its client. The technicians were sent to the client's customers to perform maintenance and repair on computer equipment sold by the client. The Ohio Supreme Court ruled that the benefit of the service being provided by the taxpayer was not being resold by the client to its customers in the same form that the client received it. The client was receiving the benefit of a flexible workforce with appropriate expertise to meet its obligations to its customers. The benefit to the customers was not the labor of the technicians provided by the taxpayer; rather, it was the end product of that labor, computers that functioned properly. Citing its decision in Bellemar Parts Industries, Inc., v. Tracy (2000), 88 Ohio St. 3d 351, the Court ruled that the resale exception of R.C. 5739.01(E)(1) did not apply to the client's purchase of employment service from the taxpayer.



**Key Services Corp. v. Zaino (2002), 95 Ohio St. 3d 11.**

Under R.C. 5739.071, the statute provides a refund of 25 percent of Sales or Use tax paid by a provider of electronic information services on computers and computer equipment “used to acquire, process or store information for use by business customers.” The Ohio Supreme Court ruled that a “provider of electronic information services” includes a person that provides those services to members of an affiliated group, even though that would not be a taxable sale of those services under R.C. 5739.01(B)(3)(e). However, the BTA did not rule on the issue of whether the services provided by the taxpayer were actually electronic information services or were automatic data processing services. The refund would only be allowed if the taxpayer was a provider of electronic

information services. The Court remanded the case to the BTA to address this issue.

**MCI Telecommunications Corp. v. Tracy (April 19, 2002), BTA Case Nos. 98-1299 and 98-1300.**

The BTA upheld an assessment of county permissive tax despite the taxpayer’s claim that it was unable, using its existing equipment, to properly situs certain telephone calls made using calling cards. The taxpayer had collected state tax only on these transactions. The Board stated that it had no authority to insert an “impossibility exception” into the statute that requires a vendor to collect “the full and exact amount of tax payable on each taxable sale,” under R.C. 5739.03.



**Table 3  
County and Transit Authority Permissive Sales Tax Collections  
Calendar Years 1997 - 2001**

County	Tax Rate 12/31/01	Amount of Tax					Effective Date	
		1997	1998	1999	2000	2001	Initial Enactment	of Current Rate
Adams	1.50	\$1,413,524	\$2,163,846	\$1,714,927	\$1,709,172	\$2,508,419	June 1, 1991	Jan. 1, 2001
Allen	1.00	11,206,205	11,812,923	12,396,517	12,931,861	12,609,819	May 1, 1970	June 1, 1987
Ashland	1.25	3,530,121	4,543,182	4,827,163	4,978,702	5,177,525	Mar. 1, 1971	Jan. 1, 1998
Ashtabula	1.00	6,629,584	7,154,163	7,552,178	7,943,877	7,741,939	Apr. 1, 1977	July 1, 1985
Athens	1.25	4,294,437	4,487,932	4,739,315	4,924,924	5,015,813	Feb. 1, 1982	Jan. 1, 1994
Auglaize	1.50	5,000,697	5,263,802	5,567,391	5,814,614	5,577,880	Nov. 1, 1973	June 1, 1996
Belmont	1.50	9,204,244	9,766,623	10,293,024	10,919,635	11,005,566	May 1, 1985	Jan. 1, 1995
Brown	1.25	2,093,146	2,401,378	2,573,458	2,666,335	2,933,412	Aug. 1, 1979	Jan. 1, 1996
Butler	0.50	12,166,559	13,140,269	14,231,493	15,907,481	16,327,018	June 1, 1985	Feb. 1, 1995
Carroll	1.00	1,292,024	1,364,596	1,486,349	1,504,183	1,547,391	Sep. 1, 1985	June 1, 1996
Champaign	1.00	2,008,650	2,358,266	2,428,019	2,487,111	2,568,349	Jan. 1, 1986	Jan. 1, 1986
Clark	1.50	14,887,162	11,989,411	11,237,543	12,089,114	12,430,551	Nov. 1, 1972	Nov. 1, 2001
Clermont	1.00	14,878,578	15,627,874	17,028,404	18,149,686	18,959,109	Aug. 1, 1979	Oct. 1, 1983
Clinton	1.00	3,183,890	3,586,807	3,696,335	3,732,794	3,758,093	May 1, 1972	Nov. 1, 1988
Columbiana	1.00	6,141,227	6,719,847	4,092,246	3,213	6,487,295	Aug. 1, 1985	Jan. 1, 2001
Coshocton	1.00	2,182,933	2,469,656	2,716,038	2,326,158	2,485,860	June 1, 1971	Mar. 1, 1985
Crawford	1.50	3,735,806	4,091,500	4,544,496	5,013,096	4,492,005	May 1, 1978	July 1, 1994
Cuyahoga	1.00	138,518,444	146,122,594	151,304,357	161,909,936	157,747,011	Sep. 1, 1969	Oct. 1, 1987
Darke	1.00	3,579,533	3,757,174	4,015,919	4,284,155	4,485,850	July 1, 1975	Jan. 1, 1988
Defiance	1.00	3,640,686	3,947,756	4,156,527	4,224,370	4,331,193	Feb. 1, 1987	Feb. 1, 1987
Delaware	1.25	9,641,481	12,043,969	14,453,215	18,211,040	20,406,106	Jan. 1, 1972	Oct. 1, 1996
Erie	1.00	9,192,540	9,674,961	10,173,486	10,640,936	10,457,954	Mar. 1, 1977	May 1, 1993
Fairfield	0.75	7,211,971	7,941,612	9,043,396	9,341,568	9,328,600	Sep. 1, 1981	Aug. 1, 1995
Fayette	1.00	3,257,468	3,567,045	3,812,525	3,944,328	4,009,709	Mar. 1, 1983	July 1, 1988
Franklin	0.50	68,560,345	72,262,490	79,029,545	82,900,256	81,139,049	Sep. 1, 1985	Sep. 1, 1985
Fulton	1.00	3,116,970	3,416,180	3,741,901	3,932,599	3,713,217	May 1, 1972	Feb. 1, 1987
Gallia	1.25	2,763,770	3,086,185	3,323,068	3,206,415	3,300,565	Dec. 1, 1981	Feb. 1, 1995
Geauga	0.50	4,873,533	3,794,817	3,886,833	4,106,539	4,187,169	Aug. 1, 1987	Feb. 1, 1998
Greene	1.00	13,516,983	14,462,120	15,771,384	16,663,041	17,721,787	Mar. 1, 1971	Feb. 1, 1987
Guernsey	1.50	4,244,131	4,395,688	4,751,472	4,693,966	4,849,472	Feb. 1, 1971	Aug. 1, 1993
Hamilton	1.00	107,312,289	112,601,389	120,294,237	120,817,937	118,656,334	June 1, 1970	June 1, 1996
Hancock	0.50	3,892,526	4,334,591	4,519,494	4,996,051	4,923,237	Feb. 1, 1979	Apr. 1, 1983
Hardin	1.00	1,645,421	2,310,259	1,964,520	2,129,093	1,961,237	Oct. 1, 1985	Mar. 1, 1990
Harrison	1.50	872,820	933,654	1,056,460	1,045,888	1,059,708	Dec. 1, 1985	June 1, 1994
Henry	1.00	1,789,026	1,918,655	1,970,309	1,922,753	2,033,158	Mar. 1, 1972	June 1, 1986
Highland	1.00	2,397,948	2,472,251	2,658,210	2,764,093	2,813,126	May 1, 1979	Mar. 1, 1993
Hocking	1.25	1,400,919	1,725,376	1,959,342	2,026,495	2,079,129	Apr. 1, 1979	Jan. 1, 1998
Holmes	1.00	3,663,837	3,245,706	3,444,413	3,591,111	3,615,131	July 1, 1977	Jan. 1, 1998
Huron	1.50	5,875,584	6,194,310	6,704,027	6,936,405	6,781,287	Feb. 1, 1978	Jan. 1, 1996
Jackson	1.50	2,201,431	3,268,022	3,629,450	3,788,268	3,860,057	Apr. 1, 1982	Jan. 1, 1998
Jefferson	1.50	6,938,657	7,550,738	7,959,072	8,212,471	8,070,683	June 1, 1973	Nov. 1, 1994
Knox	1.00	3,388,716	3,585,887	3,913,759	4,129,387	4,084,907	May 1, 1971	Feb. 1, 1994
Lake	0.50	11,899,750	13,446,963	13,467,122	14,271,275	14,359,797	July 1, 1969	Aug. 1, 1988
Lawrence	1.50	3,595,027	4,567,930	5,888,298	5,907,330	5,977,278	June 1, 1986	June 1, 1998
Licking	1.00	11,140,768	11,925,092	13,270,782	14,255,769	14,686,190	Feb. 1, 1971	Feb. 1, 1984
Logan	1.50	4,408,968	5,866,233	5,945,219	5,490,540	6,737,920	Jan. 1, 1974	July 1, 1997
Lorain	0.75	15,590,022	16,384,424	17,691,695	18,596,540	19,346,425	July 1, 1985	July 1, 1995
Lucas	1.25	59,478,972	61,791,354	66,617,121	67,926,364	67,081,391	Feb. 1, 1971	Jan. 1, 1993
Madison	1.25	2,352,627	2,442,148	3,084,714	3,574,666	3,508,994	Mar. 1, 1983	July 1, 1999
Mahoning	1.00	17,031,998	13,166,020	12,506,251	23,935,036	25,388,374	Apr. 1, 1980	Jan. 1, 2000
Marion	1.00	5,270,797	5,575,083	5,802,959	6,094,993	6,018,733	Sep. 1, 1985	Apr. 1, 1992
Medina	0.50	6,048,897	6,537,994	7,173,100	7,564,323	7,701,566	Apr. 1, 1971	Apr. 1, 1971
Meigs	1.00	11,029,520	1,107,462	1,194,290	1,178,407	1,150,382	Feb. 1, 1987	Feb. 1, 1987
Mercer	1.00	2,731,718	2,921,555	3,051,125	3,117,588	3,078,404	Nov. 1, 1971	July 1, 1987
Miami	1.00	10,347,642	10,787,022	10,662,813	9,048,808	9,145,706	Dec. 1, 1969	Nov. 1, 1999
Monroe	1.50	1,181,438	1,132,113	1,207,193	1,280,453	1,295,895	Oct. 1, 1986	Nov. 1, 1994
Montgomery	1.00	\$57,843,530	59,291,722	62,860,529	64,101,822	63,935,967	Jan. 1, 1971	July 1, 1989
Morgan	1.50	908,705	946,914	1,000,399	966,051	974,991	Feb. 1, 1972	Apr. 1, 1990
Morrow	1.50	1,766,564	1,877,688	2,080,515	2,219,450	2,336,313	July 1, 1971	July 1, 1995
Muskingum	1.50	10,936,702	11,729,991	12,556,814	13,430,005	13,217,016	May 1, 1971	Apr. 1, 1993
Noble	1.50	727,292	727,276	835,295	847,078	875,360	Jan. 1, 1971	Feb. 1, 1995
Ottawa	1.00	4,390,143	4,141,994	4,279,923	4,260,423	4,299,825	Oct. 1, 1973	Jan. 1, 1998
Paulding	1.50	1,359,136	1,436,320	1,840,801	1,528,235	1,535,789	Apr. 1, 1984	Nov. 1, 1991
Perry	1.00	1,256,215	1,355,682	1,470,176	1,505,218	1,467,299	Mar. 1, 1971	May 1, 1982
Pickaway	1.50	4,207,654	4,240,365	3,289,231	3,359,463	3,455,616	Oct. 1, 1983	Dec. 1, 2001
Pike	1.00	1,659,026	1,952,003	2,129,841	2,014,065	1,891,196	May 1, 1988	May 1, 1988
Portage	1.00	\$12,567,749	\$13,589,691	\$14,601,152	\$12,170,365	\$12,364,275	Apr. 1, 1971	Dec. 1, 1999

**SALES AND USE TAX**

**Table 3 (continued)  
County and Transit Authority Permissive Sales Tax Collections  
Calendar Years 1997 - 2001**

County	Tax Rate 12/31/01	Amount of Tax					Effective Date	
		1997	1998	1999	2000	2001	Initial Enactment	of Current Rate
Preble	1.50	\$3,506,551	\$3,435,149	\$3,722,785	\$3,965,676	\$3,932,793	Nov. 1, 1979	May 1, 1994
Putnam	1.25	2,017,394	2,254,047	2,198,501	2,379,539	2,697,284	Jan. 1, 1974	June 1, 2001
Richland	1.25	9,367,218	9,770,903	14,132,541	18,222,205	17,825,117	June 1, 1979	May 1, 1999
Ross	1.50	8,792,844	9,034,923	9,413,899	10,010,337	10,023,413	Jan. 1, 1980	Oct. 1, 1993
Sandusky	1.00	4,621,062	4,987,986	5,207,216	5,638,000	5,784,111	Aug. 1, 1979	Aug. 1, 1995
Scioto	1.50	4,940,917	5,137,617	5,320,502	5,402,810	7,113,715	May 1, 1979	May 1, 2001
Seneca	1.00	3,751,383	3,905,937	4,126,466	4,266,521	4,221,049	Oct. 1, 1983	July 1, 1988
Shelby	1.50	5,512,196	5,828,457	6,172,722	6,310,388	6,452,038	Mar. 1, 1971	Jan. 1, 1998
Stark	0.00	17,223,713	18,358,904	11,845,685	954,655	69,556	Jan. 1, 1987	July 1, 1999
Summit	0.50	28,200,093	29,677,644	30,544,906	33,231,970	32,216,548	Mar. 1, 1973	Nov. 1, 1995
Trumbull	0.50	13,414,572	14,039,304	12,376,412	10,347,754	10,112,719	June 1, 1985	June 1, 1999
Tuscarawas	1.00	9,114,475	8,911,794	8,365,581	8,550,283	8,516,440	Apr. 1, 1971	July 1, 1998
Union	1.00	3,943,913	4,138,690	4,590,268	4,535,799	7,281,115	Apr. 1, 1989	Apr. 1, 1989
Van Wert	1.50	2,897,091	3,261,252	3,314,168	3,009,268	3,179,041	Mar. 1, 1972	Mar. 1, 1991
Vinton	1.50	601,133	640,150	675,798	704,755	711,818	May 1, 1985	Mar. 1, 1992
Warren	1.00	13,117,013	15,640,249	17,402,616	18,609,304	20,075,961	Jan. 1, 1972	Jan. 1, 1992
Washington	1.50	7,006,777	7,544,000	7,906,355	8,057,457	8,202,263	Oct. 1, 1983	Jan. 1, 1990
Wayne	0.75	6,216,043	6,874,245	7,052,063	7,515,034	7,424,116	Mar. 1, 1971	Jan. 1, 1992
Williams	1.00	2,823,337	2,987,960	3,128,191	3,166,060	2,924,291	Dec. 1, 1977	Apr. 1, 1986
Wood	1.00	10,273,209	10,906,264	11,770,403	11,981,660	12,465,150	June 1, 1971	Nov. 1, 1987
Wyandot	1.00	1,326,893	1,446,498	1,516,358	1,612,759	1,639,128	Feb. 1, 1985	Jan. 1, 1988
County Total		\$925,744,502	\$975,278,513	\$1,023,952,612	\$1,061,637,557	\$1,071,940,085		
Cleveland RTA (Cuyahoga Co.)	1.00	\$138,654,205	\$146,188,752	\$151,405,646	\$161,991,565	\$157,823,888	Oct. 1, 1975	Oct. 1, 1975
Central Ohio TA (Franklin Co.)	0.25	34,516,266	36,445,397	40,163,579	42,128,119	41,601,224	Sept. 1, 1980	Feb. 1, 1990
LakeTran RTA (Lake Co.)	0.50	5,923,447	6,718,866	6,731,568	7,130,985	7,175,596	Aug. 1, 1988	Aug. 1, 1988
Miami Valley TA (Montgomery Co.)	0.50	28,925,064	29,679,763	31,445,584	32,078,659	31,968,728	July 1, 1980	July 1, 1980
Stark Area RTA (Stark Co.)	0.25	3,600,305	9,071,557	9,876,829	10,323,125	10,175,541	July 1, 1997	July 1, 1997
Metro TA (Summit Co.)	0.25	<u>13,977,569</u>	<u>14,800,821</u>	<u>15,283,091</u>	<u>16,548,007</u>	<u>16,078,157</u>	Feb. 1, 1991	Feb. 1, 1991
Transit Authority Total		<u>\$225,596,856</u>	<u>\$242,905,157</u>	<u>\$254,906,296</u>	<u>\$270,200,460</u>	<u>\$264,823,134</u>		
<b>TOTAL</b>		\$1,151,341,358	\$1,218,183,670	\$1,278,858,908	\$1,331,838,017	\$1,336,763,219		

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