COUNTY COMMISSIONERS ASSOCIATION OF OHIO

STATEMENT ON GOVERNOR'S PROPOSAL TO BROADEN SALES TAX BASE IN CONJUNCTION WITH A STATE IMPOSED REDUCTION OF COUNTY SALES TAX RATES

Introduction

The county permissive sales and use tax was first authorized in 1967 at the rate of .5%. Subsequent amendments to Ohio law have given county commissioners the authority to increase the rate of the local tax to 1.5% and to dedicate portions of the tax for specific purposes. Currently 48 counties have enacted the maximum 1.5% tax rate. The permissive sales and use tax is the single largest individual source of revenue to fund state mandates and services funded from the county general fund. The "piggyback tax" is the fuel that runs the engine of county government in Ohio.

CCAO policy currently supports a broadening of the sales tax base to include services; to support state and federal legislation to assure that taxes now due from internet sales are paid; and recognizes that counties should be given more flexibility to raise revenue by increasing rates and allowing enactment of the tax in 1/8th percent increments. For a complete list of CCAO policy statements relating to the sales tax see Exhibit 1.

CCAO Supports Broadening of Sales Tax Base

CCAO supports the Governor's initiative to modernize the sales tax by broadening the sales tax base. Tax Commissioner Joe Testa pointed out in testimony to the House Finance &

Appropriations Committee how Ohio's economy has changed since 1935 when Ohio first enacted a sales tax. Ohioans now purchase more services than they do goods—two thirds of all purchases are now for services. Taxing a broader range of services acknowledges how the economy has evolved. Taxing services should also provide increased revenue stability for the state, counties, and transit authorities.

State Imposed Rate Reductions Violates Local Control and Sets Bad Precedent

While CCAO supports an expanded sales tax base, the proposed state reductions in locally enacted, and often voter approved, permissive sales tax rates is contrary to the principle of local control and reduces the long term ability of counties to balance their budgets. See Exhibit 2 for a list of proposed rate reductions and rate reduction percentages. These rate reductions will take place in September, 2013.

Under the Administration proposal county permissive sales tax rates will be reduced from .1% to .45%. Some county rates will be reduced by 10%, while the rates in other counties will be reduced by as much as 36%. The state rate reduction from 5.5% to 5.0% is a cut of .5%, or a percentage rate reduction of 9%.

After these original rate reductions go into effect in September 2013, county tax rates are subject to further adjustments or "recalibrations" on the basis of actual data two times. The first adjustment will occur in April, 2015 and the second in April 2016.

The Governor's proposal recognizes the importance of the permissive sales tax to counties and proposes a 19 month period of guaranteed revenue growth. From December, 2013 until November 2014 the state would guarantee 10% sales tax revenue growth from the previous year. Then, from December, 2014 until June, 2015 the guarantee would increase by another 5%, to a 15% guarantee. A portion of this guaranteed revenue growth, however, would have been received by counties even without the base expansion because of projected increases in consumer spending recognized in the state budget.

For example, for FY 2014, statewide sales tax revenues, without including services in the tax base, are expected to grow by about 6.5%. Any county whose revenue growth matches that of the state would therefore also be expected to have sales tax revenue increase by 6.5%. If the Administration proposal is enacted, it should be fine-tuned to allow counties to receive their revenues based on their former county established sales tax rate on the current base coupled with the state managing the rate of return relative to revenues derived from the new expanded base. Some have paraphrased this concept to be that counties should continue to receive their local "organic rate and revenues" – what the county would have received with the economic uptick and new developments blossoming in their jurisdictions, coupled with the added revenues from the state broadening the base.

The guaranteed revenue growth proposed by the Administration, however, is at the expense of establishing a precedent that effectively allows the state to dictate local sales tax rates. The Governor's proposal sets a bad precedent. Normally, the State authorizes counties to levy taxes and sets rate limitations. Under this proposal, the state is reducing previously enacted county sales taxes. While this reduction is made in the context of a major expansion of the sales tax base, its enactment establishes a dangerous precedent: When in the future might the state attempt to reduce other previously enacted local government taxes—such as property, motor vehicle license, real property transfer, or even locally enacted lodging taxes?

Legal Problems with the State Reducing County Enacted Sales Taxes

One of the common questions asked by CCAO members is if the proposal to reduce locally enacted sales tax rates legal or constitutional? We do not yet have a definitive answer to this question. However, since counties only have the authority to enact a permissive sales tax because it is specifically authorized by the General Assembly, the ability to reduce authorized rates is not in question.

A different legal standard, however, may apply to a currently enacted county sales tax rate including whether such a provision is a retroactive law; whether the law could cause a county to break a contractual obligation; or whether the fact that a tax was voter approved raises other legal questions. All of these issues are currently under review by CCAO legal counsel.

3 Year Moratorium on Sales and Use Tax Rates is Unacceptable

The Governor's proposal establishes a 3 year moratorium on any county permissive sales and use tax increase. The period of the moratorium begins on July 1, 2013 and ends on June 30, 2016. This restriction on a county increasing its sales tax rate during this period is not acceptable.

During this 3 year period some county sales taxes will expire because they were enacted for a fixed period of years. It is not clear if these counties will have the opportunity to even "continue" or "renew" these currently enacted taxes.

Likewise, and even more basic, the moratorium handcuffs commissioners ability for 3 years to increase the tax when additional revenue is needed to fund critical county operations and limits the ability of commissioners to ask voters to approve a sales tax increase to fund needed county projects such as jails, courthouse improvements, and other capital improvements.

It appears the Administration believes the proposed moratorium is needed to expedite the calculations necessary to adjust sales tax rates in 2015 and 2016. CCAO believes that accounting and sales tax reporting systems can be designed to still enable the Department of Taxation to make the necessary "recalibration" calculations without a state imposed moratorium.

Impact on Bonds Using Permissive Sales Tax as Pledge for Repayment of Debt

Counties are authorized under Ohio's Uniform Bond Law to pledge sales tax revenue as a source of repayment of debt. In addition, ORC Section 133.081(H) provides that:

> The taxing authority of a county may not repeal, rescind, or reduce any portion of a county sales tax pledged to the payment of debt charges on sales tax supported bonds issued by the county while such sales tax supported bonds remain outstanding, and no portion of a county sales tax pledged to the payment of debt charges on sales tax supported bonds shall be subject to repeal or reduction by the electorate of the county or by the taxing authority of the county while such sales tax supported bonds are outstanding.

Even if the guarantee provisions of the proposed change would provide the funds necessary to service the debt, changes to the law to protect the county from actions by bondholders should be enacted if the rate reductions remain in the bill. Does the state imposed lowering of county sales tax rates violate the terms of the bonds or any covenants that the county has entered into dedicating the sales tax for the repayment of the bonds?

Perhaps of greater consequence is how the market will respond to the fact that the state may unilaterally reduce county sales tax rates. Our concern is that this will create additional uncertainty in the market and will have the effect of eliminating the use of or increasing borrowing costs for sales tax backed debt in the future.

Uncertainty on Maximum Sales Tax Rates After Moratorium in July, 2016

One of the more confusing aspects of the Administration's proposal is to understand what the maximum authorized county sales tax rate will be after the adjustments or "recalibrations" that will be made in 2015 and 2016 at the end of the proposed 3 year moratorium. It appears that at the end of the moratorium each county will have a new maximum sales tax rate authority which will be less than the 1.5% currently authorized by state law. CCAO believes that the Administration should calculate for each county what additional sales tax authority will exist in July, 2016 assuming the original reduced rates as shown on Exhibit 2 are adjusted or "recalibrated" both upward and downward by .1% after the two rate adjustments in 2015 and 2016.

Finally, the fact that the proposed language in H. B. 59 attempts to combine the ORC Section 5739.021 and the 5739.026 taxes into one section creates a series of problems because of the different nature of these two sections of the Ohio Revised Code granting counties the authority to enact a sales tax. CCAO believes that the combination of these two taxes into one ORC section creates problems and urges, even if the tax rate reductions are enacted, that they should remain separate sections of the Ohio Revised Code.

Questions, Questions, Questions

In addition to the issues raised and questions posed in this paper, there are numerous other questions and technical issues that need to be addressed if this proposal is enacted by the General Assembly. Please refer to Exhibit 3 for as summary of these technical issues and questions.

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Exhibit 1

CCAO CURRENT POLICIES RELATING TO SALES AND USE TAX

SALES TAX BASE BROADENING AND TAX REFORM

As part of a continuing effort to provide stable revenues to counties, enhance county fiscal security, and generate revenue in a fair and equitable manner from all segments of our evolving economy, CCAO supports the broadening of the state's sales and use tax base to include additional services and Internet, catalogue, and telephone sales.

CCAO objects to, and will strongly oppose, efforts to reduce or eliminate, or to recapture for the benefit of the state at the expense of counties, any additional sales and use tax revenue generated by counties through any broadening of the sales and use tax base that extends the tax to additional services, or to additional types of sales, such as Internet, catalogue, or telephone sales.

Finally, if any new tax reform results in the repeal or modification of additional major local taxes, the General Assembly should provide full, complete, and permanent replacement of lost revenue to local governments.

PERMISSIVE TAXES

As part of its continuing joint effort with the state to provide stable funding sources for counties, CCAO supports increased flexibility for counties to levy permissive taxes to fund needed services at the local level. Counties should be given flexible authority to levy an additional sales and use tax and the existing sales and use tax in 1/8%, ¼%, or ½% increments for any purpose now authorized by state law. The law should not require commissioners to submit the proposal to the electors, however, the right to referendum should be retained.

The authority to levy local sales taxes should be reserved for counties, and CCAO opposes efforts to give this authority to school districts and other political subdivisions.

VENDOR OR CONSUMER SALES TAX REFUNDS

A consumer or a vendor has four years from the date that they erroneously or illegally paid the tax to file a refund request with the tax commissioner, unless the consumer or vendor waives the time limitation under ORC Section 5739.16 (A)(3). If the time limitation is waived, the refund application period must be extended for the same period as the waiver.

CCAO supports reducing the period of time during which a consumer or a vendor may seek a refund from four to three years. CCAO also supports eliminating the provisions of law (ORC Sections 5739.07 (D) and 5739.16 (A)(3)) permitting a consumer or vendor to waive the four year time limit for an indefinite period of time.

Existing law requires the tax commissioner to recover from the current receipts of the same tax source from which a refund is to be paid. If the current receipts from that tax source are inadequate for the purpose of covering the refund, then the refund is transferred from the current receipts of the state sales tax and then reimbursed to the state from the next distribution of that tax to the taxing jurisdiction. If the refund exceeds 25% of the next distribution of the tax, the tax commissioner may spread the recovery over a period of no more than 2 years, taking into account the amount to be recovered and the amount of future distributions.

CCAO supports extending the time period during which a county may be required by the tax commissioner to reimburse a consumer or vendor for an erroneous or illegal payment from a maximum of 2 years to a maximum of 3 years.

INTERNET SALES TAX

In the interests of preserving the base of the state and local sales tax and ensuring that the merchandise marketplace is equitable, with no segment given an unfair advantage, CCAO supports federal legislation that would create an opportunity for states to simplify their sales tax collection systems and enhance their ability to collect taxes from remote sellers.

SALES TAX ADMINISTRATIVE FEES OF THE DEPARTMENT OF TAXATION

The Ohio Department of Taxation is entitled to retain an administrative fee up to one percent of the total collections of counties and transit authorities that enact permissive sales and use tax. This fee should be reduced to more accurately reflect the true cost of administration and distribution of local permissive sales and use taxes.

Exhibit 2

INITIAL COUNTY PERMISSIVE SALES AND USE TAX RATE REDUCTIONS AS PROPOSED BY THE ADMINISTRATION

County	County Rate	New Rate	Rate Reduction	% Change in Rate
Adams	1.50	1.35	0.15	10%
Allen	1.00	0.80	0.20	20%
Ashland	1.25	1.00	0.25	20%
Ashtabula	1.00	0.80	0.20	20%
Athens	1.25	1.10	0.15	12%
Auglaize	1.50	1.20	0.30	20%
Belmont	1.50	1.20	0.30	20%
Brown	1.50	1.35	0.15	10%
Butler	0.75	0.60	0.15	20%
Carroll	1.00	0.90	0.10	10%
Champaign	1.50	1.20	0.30	20%
Clark	1.50	1.20	0.30	20%
Clermont	1.00	0.80	0.20	20%
Clinton	1.50	1.20	0.30	20%
Columbiana	1.50	1.20	0.30	20%
Coshocton	1.50	1.20	0.30	20%
Crawford	1.50	1.20	0.30	20%
Cuyahoga	1.25	0.80	0.45	36%
Darke	1.50	1.20	0.30	20%
Defiance	1.00	0.80	0.20	20%
Delaware	1.25	0.80	0.45	36%
Erie	1.00	0.65	0.35	35%
Fairfield	1.00	0.80	0.20	20%
Fayette	1.50	1.20	0.30	20%
Franklin	0.75	0.50	0.25	33%
Fulton	1.50	1.20	0.30	20%
Gallia	1.25	1.00	0.25	20%
Geauga	1.00	0.75	0.25	25%
Greene	1.00	0.80	0.20	20%
Guernsey	1.50	1.20	0.30	20%
Hamilton	1.00	0.65	0.35	35%
Hancock	1.00	0.75	0.25	25%
Hardin	1.50	1.35	0.15	10%
Harrison	1.50	1.35	0.15	10%
Henry	1.50	1.20	0.30	20%
Highland	1.50	1.20	0.30	20%
Hocking	1.25	1.10	0.15	12%
Holmes	1.00	0.80	0.20	20%
Huron	1.50	1.20	0.30	20%
Jackson	1.50	1.20	0.30	20%

Jefferson	1.50	1.20	0.30	20%
Knox	1.00	0.80	0.20	20%
Lake	1.00	0.75	0.25	25%
Lawrence	1.50	1.35	0.15	10%
Licking	1.50	1.20	0.30	20%
Logan	1.50	1.10	0.40	27%
Lorain	0.75	0.60	0.15	20%
Lucas	1.25	1.00	0.25	20%
Madison	1.25	1.00	0.25	20%
Mahoning	1.00	0.80	0.20	20%
Marion	1.00	0.80	0.20	20%
Medina	1.00	0.80	0.20	20%
Meigs	1.50	1.35	0.15	10%
Mercer	1.50	1.20	0.30	20%
Miami	1.25	1.00	0.25	20%
Monroe	1.50	1.20	0.30	20%
Montgomery	1.00	0.75	0.25	25%
Morgan	1.50	1.35	0.15	10%
Morrow	1.50	1.35	0.15	10%
Muskingum	1.50	1.20	0.30	20%
Noble	1.50	1.35	0.15	10%
Ottawa	1.25	1.00	0.25	20%
Paulding	1.50	1.20	0.30	20%
Perry	1.50	1.35	0.15	10%
Pickaway	1.50	1.20	0.30	20%
Pike	1.50	1.20	0.30	20%
Portage	1.00	0.80	0.20	20%
Preble	1.50	1.20	0.30	20%
Putnam	1.50	1.20	0.30	20%
Richland	1.25	1.00	0.25	20%
Ross	1.50	1.20	0.30	20%
Sandusky	1.50	1.20	0.30	20%
Scioto	1.50	1.20	0.30	20%
Seneca	1.50	1.20	0.30	20%
Shelby	1.50	1.10	0.40	27%
Stark	0.50	0.40	0.10	20%
Summit	0.50	0.35	0.15	30%
Trumbull	1.00	0.80	0.20	20%
Tuscarawas	1.00	0.80	0.20	20%
Union	1.25	1.00	0.25	20%
Van Wert	1.50	1.20	0.30	20%
Vinton	1.50	1.35	0.15	10%
Warren	1.00	0.65	0.35	35%
Washington	1.50	1.20	0.30	20%
Wayne	0.75	0.60	0.15	20%
Williams	1.50	1.20	0.30	20%
Wood	1.00	0.75	0.25	25%
Wyandot	1.50	1.20	0.30	20%

Exhibit 3

OTHER QUESTIONS AND ISSUES RELATED TO THE ADMINISTRATION COUNTY PERMISSIVE SALES TAX RATE REDUCTION PROPOSAL

1. Are services purchased by a county subject to the proposed expanded state sales tax? For example, would the purchase of appraisals, actuaries, accounting, and attorney services by a county be subject to the tax?

2. Would the provisions of ORC 5739.212 which require counties to reimburse vendors for the cost of recalibrating a cash register apply to any increase in sales tax rates in response to the two adjustments in county sales tax rates required by HB 59?

3. Does the fact that voters have approved many sales tax levies have any impact on whether the state adjusts the rates?

4. If a county reduced its inside property tax millage in conjunction with an increase in the sales tax, what happens to the inside millage rate that was reduced?

5. Is the expansion of Medicaid built into the state and local forecast of additional revenue? Is Medicaid expansion treated as part of base broadening or is this just rolled into inflationary growth in revenue?

6. How will county sales tax refunds be used when determining the revenue base from which the minimum guarantee is calculated since refunds will artificially lower the revenue base from which the calculation is made?

7. Existing law permits a county to levy a sales tax for a continuing or specified period of time. If a county enacts the sales tax for a specified period of time and the tax is to expire during the time period that counties are prohibited from adjusting rates, would the county in question receive a reduced rate or the guaranteed rate based on the rate of the tax from December 2012 through November 2013?

8. Several counties have taxes that are due to expire in calendar year 2013. Most of these counties intend to reenact those taxes in 2013. Will those counties be allowed to reenact existing taxes during 2013, given that they planned to do that this year?

9. What about counties that, as a result of declining revenues the past few years, had planned to increase the county sales tax rate in 2013 based on the fact that they have remaining authority that they have yet to use?

10. If a county enacts or reenacts a county sales tax by July 1, 2013, will this increase be included within their base for calculation purposes going forward?

11. Is the effective date for final enactment of a tax this year July 1st?

12. If a county has a sales tax that expires in October, 2013 but the commissioners adopt their resolution by July 1, will the tax be continued after October 1, 2013?

13. If a county enacts a sales tax by July 1 of 2013 but a referendum is filed before the tax takes effect, will the voters requesting the referendum be allowed to vote on the question of the tax this November?

14. Existing law permits the voters in any year to file petitions requesting that a sales tax enacted as an emergency (ORC 5739.022) be subject to an initiative petition to repeal. Because such an initiative petition to repeal may be filed in any year for the general election of that year, is the state going to suspend the authority of the voters to use the initiative petition process as it relates to emergency sales and use tax enactments until July 1, 2016?