



COUNTY ADVISORY BULLETIN

CAB

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NEW LAWS AUTHORIZE COUNTY PERMISSIVE MANUFACTURED HOME TRANSFER TAX AND LOWER RATE FOR PERMISSIVE REAL PROPERTY TRANSFER TAX

INTRODUCTION

SB 142 of the 122nd General Assembly, effective March 30, 1999, made significant changes to the law concerning taxation and land use treatment of manufactured homes. County Advisory Bulletin (CAB) 99-9 addressed the details of the law as it applies to land use and zoning. That CAB also included a general discussion of the major tax law changes included in the legislation. This CAB will discuss provisions in SB 142 authorizing a board of county commissioners to levy a permissive manufactured home transfer tax.

The new permissive manufactured home transfer tax can not take effect until January 1, 2000. As a result of other tax law changes affecting manufactured homes, CCAO urges all counties to consider the enactment of this new permissive tax as way to replace revenue that will be lost because of these changes in SB 142, which will be discussed later in this CAB.

In addition, SB 41 of the 123rd General Assembly will become effective on September 29, 1999. This new law authorizes a board of county commissioners to lower the rate of any permissive real property or manufactured home transfer tax for grantors that qualify for the homestead exemption.

This CAB will discuss both of these new laws and will also suggest approaches counties should consider when responding to these new laws.

BACKGROUND ON REAL PROPERTY TRANSFER TAX

The General Assembly enacted Chapter 322 of the Ohio Revised Code in 1967. It was

included with legislation authorizing counties to enact a package of permissive taxes. This law authorized counties to enact a sales and use tax, a \$5 “piggy back” motor vehicle license tax, and a utilities service tax, in addition to the real property transfer tax.

Counties have the authority to enact the permissive real property transfer tax at a rate of not more than 3 mills, or 30¢ per \$100 of value. This 3 mill authority is in addition to the 1 mill (10¢ per \$100 of value) mandatory real property transfer fee required to be collected in every county pursuant to ORC Section 319.54(F)(3).

During tax year 1997, 65 counties levied a permissive real property transfer tax. Table 1 (included with this CAB) shows the revenue collected by counties in tax year 1997 from both the 1 mill mandatory transfer fee and the permissive real property transfer tax and the rate of the permissive tax.. Following is a summary of county permissive real transfer tax rates in 1997:

RATE OF PERMISSIVE REAL PROPERTY TRANSFER TAX	NUMBER OF COUNTIES
0 mills	23
1 mill	16
2 mills	25
3 mills	23

Note: Hamilton County levies a transfer tax at a rate of 1.5 mills.

TAX LAW CHANGES IN SB 142

The primary purpose of SB 142 was to treat manufactured homes the same as other housing. The law concentrated on two areas for such equal treatment - local land use and zoning regulations and taxation.

The major impact on county revenues results from changes to the sales and use tax law. Under current law a new manufactured or mobile home is subject to the sales tax at the time of purchase. The tax is collected at the rate in effect in the county where the unit is titled, and is paid on the total purchase price charged the owner. Likewise, a manufactured or mobile home purchased from an out-of-state dealer and the sale of a used home is subject to the use tax.

S.B. 142 changes the law so that, effective January 1, 2000, the sales tax paid at the time of sale of a new unit to the consumer will be based on the price reflected in the dealers' invoice, not the full selling price to the consumer. The dealer may not charge tax to the owner, but is permitted to pass the cost of the tax through to the purchaser as part of the

price to the consumer.

Out-of-state dealers would be subject to Ohio's use tax, based on dealer's cost, when a new unit is sold or delivered to the ultimate consumer in Ohio. In the case of a used manufactured or mobile home, however, neither the sales tax nor the use tax is paid. The transfer, however, is subject to the one mill mandatory transfer fee and to the new county permissive manufactured home transfer tax, if enacted by the county.

S.B. 142 also makes a variety of other tax law changes, although their impact is not as significant to counties. These changes include a gain in revenue because of a requirement that the county auditor collect the real property transfer fee; a loss of revenue resulting from changes in the application of the real property and manufactured home tax; losses to the two local government funds; and, an increase to the real estate assessment fund resulting from certain fees and penalties.

FISCAL IMPACT OF TAX LAW CHANGES

According to the Legislative Budget Office (LBO), many of the changes in tax law will result in revenue losses to counties. The following table summarizes both estimated losses and gains from these changes:

ESTIMATED REVENUE IMPACT OF TAX LAW CHANGES

THE LAW CHANGE	LOSS	GAIN	TOTAL
Permissive Sales & Use Tax	(2,500,000)	0	(2,500,000)
Mandatory	0	450,000	450,000
Real Estate Assessment Fund	0	50,000	50,000
Real Manufactured Home Tax	(800,000)	0	(800,000)
TOTALS	(3,300,000)	500,000	(2,800,000)

On top of these losses, counties will also experience reduced revenue from the two local government funds (LGF's). It is estimated that the change in the sales tax law will result in annual losses of approximately \$345,000 to both LGF's. These losses, however, are shared by counties, townships, municipalities, and some park districts. Also note that anticipated losses from changes in the real property and manufactured home tax law (\$800,000) is shared by all non-school taxing authorities, and not solely by the county general fund and county special tax levy funds.

RECOMMENDATION FOR ALL COUNTIES TO ENACT PERMISSIVE MANUFACTURED HOME TAX

A review of the revenue loss data leads CCAO to the conclusion that all counties should

seriously consider enacting the permissive manufactured home transfer tax as a way to offset revenue losses that will take place because of other tax law changes.

With an annual net loss of \$2.05 million to county general funds as a result of reduced sales tax collections, offset by an increase of \$450,000 from mandatory conveyance fees, counties could enact a full three mill manufactured home transfer tax (estimated to yield \$1.35 Million) and county general funds would still receive \$700,000 less than they did before the tax changes. This does not include general fund losses counties will experience as a result of reduced revenue from inside millage (a portion of \$800,000) and reduced LGF receipts (a portion of \$345,000 annually).

It should be noted, however, that only counties that have enacted the real property transfer tax may enact the manufactured home transfer tax because the law requires the rate of both permissive taxes to be the same.

AUTHORITY TO ENACT MANUFACTURED HOME TRANSFER TAX

S.B. 142 enacts new ORC Section 322.06 that authorizes the board of county commissioners to levy the permissive manufactured home tax. The purpose of the tax is to pay for the costs to administer and enforce the tax and to provide additional general revenue for the county.

The tax is levied on each certificate of title that conveys, by resale, on or after January 1, 2000 a used manufactured or a used mobile home. A used manufactured or mobile home is defined in ORC 5739.0210 (A)(6) as a home “the legal title to which is being transferred or previously has been transferred by an owner other than a new motor vehicle dealer.” The original sale of a new manufactured or mobile home by a dealer to an owner will continue to require the sales tax to be paid on the dealer’s cost as was previously discussed.

If the county chooses to enact the permissive tax it must be levied at the same rate as the county permissive real property transfer tax. This means that only those counties that have enacted the real property transfer tax may enact the new manufactured home transfer tax and the rate must be the same. The tax is levied by resolution of the board of county commissioners and must follow the same procedures required for the enactment of the real property transfer tax as specified in ORC 322.02 (A).

ENACTMENT OPTIONS

The manufactured home transfer tax may be enacted in three ways:

1. Regular Enactment - The resolution conveying the tax is adopted, but may not become effective sooner than 30 days after the resolution is adopted, but not earlier than January 1, 2000. During this period of time the resolution is subject to a referendum under ORC Sections 305.31-305.41. A petition signed by 10 percent of those voting for the Governor in the last election

- must be submitted. If such a petition is submitted the tax can not take effect until the question is approved at the next general or primary election.
2. Emergency Enactment - The resolution levying the tax is adopted as an emergency measure and goes into immediate effect, however, it cannot go into effect prior to January 1, 2000. The emergency resolution must be unanimously approved and must state the reasons for the emergency. A tax enacted as an emergency measure is not subject to a referendum, but is subject to an election to repeal (ORC 322.021) in any subsequent year at a general election. In this case, if the tax is rejected it is collected until the end of the current year.
 3. Submission to Electors - The resolution may direct the board of elections to submit the tax to the electors at the next general or primary election. The resolution must be submitted to the board of elections at least 75 days before the election, and may not go into effect until approved by the electors.

ENACTMENT PROCEDURES

Prior to adopting any resolution levying the manufactured home transfer tax, two public hearings must be held. The second public hearing must be held not less than three nor more than ten days after the first hearing.

Notice of hearings must be published in a newspaper general circulation. The notice must be published once a week for two consecutive weeks. The second publication can not be less than 10 nor more than 30 days before the first hearing. The notice must include the date, time, and place of the hearing. The hearing can be held at either a regular or special session of the board.

EFFECTIVE DATE OF PERMISSIVE MANUFACTURED HOME TRANSFER TAX

The permissive manufactured home transfer tax may not be levied and collected prior to January 1, 2000. The question that arises is whether a board of county commissioners may enact the tax prior to this time and levy and collect the tax beginning on January 1, 2000.

While counties are encouraged to pose this question to the County Prosecutor, we believe that enactment procedures may be initiated prior to this date as long as the resolution levying the tax makes it effective beginning January 1, 2000.

REDUCTION OF PERMISSIVE TRANSFER TAXES FOR PROPERTIES THAT QUALIFY FOR HOMESTEAD EXEMPTION

SB 41 of the 123rd General Assembly, effective September 29, 1999, authorizes the board of county commissioners to lower the rate of both the permissive real and manufactured home transfer tax if the grantor qualifies for the homestead exemption.

The statutes authorizing both the permissive real property transfer tax (ORC 322.02) and the permissive manufactured home transfer tax (ORC 322.06) generally require that the tax be “levied at a uniform rate.” SB 41 enacts a new ORC section 322.07. Division A of this section specifically allows the Board to “prescribe a lower rate for the real property transfer tax...than the uniform rate...” This “lower rate” applies “to any deed conveying a homestead for which the grantor has obtained a certificate of reduction in taxes under section 323.154 of the Revised Code for reduction under Division (A) of section 323.152 of the Revised Code.” The lower rate would thus apply to transfers where the owner has qualified for the homestead exemption. The law would allow the lower rate to be any rate lower than the uniform rate, including a total exemption from the permissive real property and manufactured home transfer tax.

Division (B) of ORC 322.07 provides that if the Board reduces the rate of the real property transfer tax for those who qualify for the homestead exemption, the Board “... shall prescribe the same lower rate for the manufactured home transfer tax.”

In the case of a manufactured home, the lower rate would apply to the title conveying a used manufactured home or used mobile home for which the grantor has obtained a certificate of reduction in value under ORC 4503.067, the manufactured home homestead exemption. The county may not prescribe a lower rate for the 1 mill mandatory conveyance fee established in ORC (319.54 (F) (3).

PROCEDURES FOR LOWERING THE RATE OF A TRANSFER TAX

The law simply allows the board of county commissioners to “prescribe a lower rate.” Action is taken by resolution, and requires no public hearing or notice, other than the action must be taken at a regular or special session of the Board. It is suggested that if a county plans to lower the rate, the issue be specified on the agenda of the session of the Board. Counties could always hold a public hearing and publish a notice in the newspaper, but such action is not required.

OPTIONS FOR COUNTIES

As a result of the enactment of these two laws, counties have a variety of options. The following table attempts to summarize these options.

OPTIONS FOR COUNTIES

TYPE OF COUNTY	OPTIONS
Counties Currently Levying a 3 Mill Real Property Transfer Tax	<ol style="list-style-type: none"> 1. Enact a 3 Mill manufactured home transfer Tax. 2. Prescribe a lower rate for homestead exempted property for both real property and manufactured home transfer tax.
Counties Currently Levying a Real Property Transfer Tax at a Rate of Less Than 3 Mills	<ol style="list-style-type: none"> 1. Enact a manufactured home transfer tax at the same rate as the real property transfer tax. 2. Prescribe a lower rate for homestead exempted property for both transfer taxes. 3. Increase the real property transfer tax to a higher or the maximum rate and enact the manufactured home transfer tax at the rate of the increased real property transfer tax.
TYPE OF COUNTY	OPTIONS
Counties Currently Not Levying Any Real Property Transfer Tax	<ol style="list-style-type: none"> 1. Enact the real property transfer tax at a rate of up to 3 Mills. 2. Enact the manufactured home transfer tax at the same rate as the real property transfer tax. 3. Prescribe a lower rate for homestead exempted properties for both transfer taxes.

QUESTIONS AND ISSUES

All counties are encouraged to enact the manufactured home transfer tax in an effort to offset revenue losses resulting from changes to the sales and use tax and other tax law changes. For counties that want to enact only the manufactured home transfer tax at the same rate as the current real property transfer tax the procedures are clearly spelled out in this CAB and in the law.

For counties that want to prescribe a lower rate for homestead exempted properties under both transfer taxes, or for counties that want to enact the transfer tax for the first time or increase the rate of a current real property transfer tax at the same time they enact the manufactured home transfer tax, the answers to procedural questions become more

uncertain. The advice of the County Prosecutor is encouraged in these cases.

Counties may not like the new authority to prescribe a lower rate for homestead exempted properties because it may generate public pressure for commissioners to give this tax reduction to senior citizens. In such situations, however, counties may use this tax reduction provision of the law to generate public support for a first-time enactment or increase of a real property transfer tax when done at the same time as enacting the manufactured home transfer tax.

For example, it might be possible for the commissioners to take three actions at one time: (1) enact the real property transfer tax for the first time, or increase the rate of the current transfer tax; (2) enact the manufactured home transfer tax at the same rate as the new rate of the real property transfer tax; and (3) prescribe a lower rate under both transfer taxes to grantors transferring homestead exempted property. When combining these actions, however, there are important legal questions that must be answered by counsel. It is important that these questions are answered because the real property transfer tax is often challenged by realtor groups. Procedural questions thus need to be carefully considered in anticipation of possible legal actions that may be taken in an effort to stop the enactment of the tax or an increase in the rate of a current tax.