

As Introduced

134th General Assembly

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H. B. No. 234

Representatives Gross, McClain

**Cosponsors: Representatives Powell, Zeltwanger, Riedel, Merrin, Click, Holmes,
Wiggam, Hall, Cross, Dean, Fowler Arthur, Householder, Schmidt, Ferguson**

A BILL

To amend sections 5751.02 and 5751.03 of the 1
Revised Code to repeal the commercial activity 2
tax with a five-year phase-out. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5751.02 and 5751.03 of the 4
Revised Code be amended to read as follows: 5

Sec. 5751.02. (A) For the purpose of funding the needs of 6
this state and its local governments, ~~there is hereby levied a~~ 7
commercial activity tax is hereby levied for tax periods ending 8
before January 1, 2026, on each person with taxable gross 9
receipts for the privilege of doing business in this state. For 10
the purposes of this chapter, "doing business" means engaging in 11
any activity, whether legal or illegal, that is conducted for, 12
or results in, gain, profit, or income, at any time during a 13
calendar year. Persons on which the commercial activity tax is 14
levied include, but are not limited to, persons with substantial 15
nexus with this state. The tax imposed under this section is not 16
a transactional tax and is not subject to Public Law No. 86-272, 17
73 Stat. 555. The tax imposed under this section is in addition 18

to any other taxes or fees imposed under the Revised Code. The 19
tax levied under this section is imposed on the person receiving 20
the gross receipts and is not a tax imposed directly on a 21
purchaser. The tax imposed by this section is an annual 22
privilege tax for the calendar year that, in the case of 23
calendar year taxpayers, is the annual tax period and, in the 24
case of calendar quarter taxpayers, contains all quarterly tax 25
periods in the calendar year. A taxpayer is subject to the 26
annual privilege tax for doing business during any portion of 27
such calendar year. 28

(B) The tax imposed by this section is a tax on the 29
taxpayer and shall not be billed or invoiced to another person. 30
Even if the tax or any portion thereof is billed or invoiced and 31
separately stated, such amounts remain part of the price for 32
purposes of the sales and use taxes levied under Chapters 5739. 33
and 5741. of the Revised Code. Nothing in division (B) of this 34
section prohibits: 35

(1) A person from including in the price charged for a 36
good or service an amount sufficient to recover the tax imposed 37
by this section; or 38

(2) A lessor from including an amount sufficient to 39
recover the tax imposed by this section in a lease payment 40
charged, or from including such an amount on a billing or 41
invoice pursuant to the terms of a written lease agreement 42
providing for the recovery of the lessor's tax costs. The 43
recovery of such costs shall be based on an estimate of the 44
total tax cost of the lessor during the tax period, as the tax 45
liability of the lessor cannot be calculated until the end of 46
that period. 47

(C) (1) The commercial activities tax receipts fund is 48

hereby created in the state treasury and shall consist of money 49
 arising from the tax imposed under this chapter. Sixty-five one- 50
 hundredths of one per cent of the money credited to that fund 51
 shall be credited to the revenue enhancement fund and shall be 52
 used to defray the costs incurred by the department of taxation 53
 in administering the tax imposed by this chapter and in 54
 implementing tax reform measures. The remainder of the money in 55
 the commercial activities tax receipts fund shall first be 56
 credited to the commercial activity tax motor fuel receipts 57
 fund, pursuant to division (C)(2) of this section, and the 58
 remainder shall be credited in the following percentages each 59
 fiscal year to the general revenue fund, to the school district 60
 tangible property tax replacement fund, which is hereby created 61
 in the state treasury for the purpose of making the payments 62
 described in section 5709.92 of the Revised Code, and to the 63
 local government tangible property tax replacement fund, which 64
 is hereby created in the state treasury for the purpose of 65
 making the payments described in section 5709.93 of the Revised 66
 Code, in the following percentages: 67

	1	2	3	4
A	Fiscal year	General Revenue Fund	School District Tangible Property Tax Replacement Fund	Local Government Tangible Property Tax Replacement Fund
B	2014 and 2015	50.0%	35.0%	15.0%

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C	2016 and 2017	75.0%	20.0%	5.0%
D	2018 and thereafter	85.0%	13.0%	2.0%

(2) Not later than the twentieth day of February, May, 69
August, and November of each year, the commissioner shall 70
provide for payment from the commercial activities tax receipts 71
fund to the commercial activity tax motor fuel receipts fund an 72
amount that bears the same ratio to the balance in the 73
commercial activities tax receipts fund that (a) the taxable 74
gross receipts attributed to motor fuel used for propelling 75
vehicles on public highways as indicated by returns filed by the 76
tenth day of that month for a liability that is due and payable 77
on or after July 1, 2013, for a tax period ending before July 1, 78
2014, bears to (b) all taxable gross receipts as indicated by 79
those returns for such liabilities. 80

(D) (1) If the total amount in the school district tangible 81
property tax replacement fund is insufficient to make all 82
payments under section 5709.92 of the Revised Code at the times 83
the payments are to be made, the director of budget and 84
management shall transfer from the general revenue fund to the 85
school district tangible property tax replacement fund the 86
difference between the total amount to be paid and the amount in 87
the school district tangible property tax replacement fund. 88

(2) If the total amount in the local government tangible 89
property tax replacement fund is insufficient to make all 90
payments under section 5709.93 of the Revised Code at the times 91
the payments are to be made, the director of budget and 92
management shall transfer from the general revenue fund to the 93
local government tangible property tax replacement fund the 94

difference between the total amount to be paid and the amount in 95
the local government tangible property tax replacement fund. 96

(E) (1) On or after the first day of June of each year, the 97
director of budget and management may transfer any balance in 98
the school district tangible property tax replacement fund to 99
the general revenue fund. 100

(2) On or after the first day of June of each year, the 101
director of budget and management may transfer any balance in 102
the local government tangible property tax replacement fund to 103
the general revenue fund. 104

(F) (1) There is hereby created in the state treasury the 105
commercial activity tax motor fuel receipts fund. 106

(2) On or before the fifteenth day of June of each fiscal 107
year beginning with fiscal year 2015, the director of the Ohio 108
public works commission shall certify to the director of budget 109
and management the amount of debt service paid from the general 110
revenue fund in the current fiscal year on bonds issued to 111
finance or assist in the financing of the cost of local 112
subdivision public infrastructure capital improvement projects, 113
as provided for in Sections 2k, 2m, 2p, and 2s of Article VIII, 114
Ohio Constitution, that are attributable to costs for 115
construction, reconstruction, maintenance, or repair of public 116
highways and bridges and other statutory highway purposes. That 117
certification shall allocate the total amount of debt service 118
paid from the general revenue fund and attributable to those 119
costs in the current fiscal year according to the applicable 120
section of the Ohio Constitution under which the bonds were 121
originally issued. 122

(3) On or before the thirtieth day of June of each fiscal 123

year beginning with fiscal year 2015, the director of budget and 124
management shall determine an amount up to but not exceeding the 125
amount certified under division (F) (2) of this section and shall 126
reserve that amount from the cash balance in the petroleum 127
activity tax public highways fund or the commercial activity tax 128
motor fuel receipts fund for transfer to the general revenue 129
fund at times and in amounts to be determined by the director. 130
The director shall transfer the cash balance in the petroleum 131
activity tax public highways fund or the commercial activity tax 132
motor fuel receipts fund in excess of the amount so reserved to 133
the highway operating fund on or before the thirtieth day of 134
June of the current fiscal year. 135

Sec. 5751.03. (A) Except as provided in division (B) of 136
this section, the tax levied under this section for each tax 137
period shall be the product ~~of obtained by multiplying two and~~ 138
six-tenths mills per dollar ~~times,~~ the remainder of the 139
taxpayer's taxable gross receipts for the tax period after 140
subtracting the exclusion amount provided for in division (C) of 141
this section, and one of the following: 142

(1) For calendar years ending before January 1, 2022, one 143
hundred per cent; 144

(2) For calendar year 2022, eighty per cent; 145

(3) For calendar year 2023, sixty per cent; 146

(4) For calendar year 2024, forty per cent; 147

(5) For calendar year 2025, twenty per cent. 148

(B) Notwithstanding division (C) of this section, the tax 149
on the first one million dollars in taxable gross receipts each 150
calendar year shall be calculated as follows: 151

(1) <u>For calendar years ending before January 1, 2022, one</u>	152
<u>of the following:</u>	153
<u>(a) For taxpayers with annual taxable gross receipts of</u>	154
one million dollars or less for the calendar year, one hundred	155
fifty dollars;	156
(2) <u>(b) For taxpayers with annual taxable gross receipts</u>	157
greater than one million dollars, but less than or equal to two	158
million dollars for the calendar year, eight hundred dollars;	159
(3) <u>(c) For taxpayers with annual taxable gross receipts</u>	160
greater than two million dollars, but less than or equal to four	161
million dollars for the calendar year, two thousand one hundred	162
dollars;	163
(4) <u>(d) For taxpayers with annual taxable gross receipts</u>	164
greater than four million dollars for the calendar year, two	165
thousand six hundred dollars.	166
<u>(2) For calendar years 2022 and thereafter, the amount</u>	167
<u>applicable to the taxpayer under division (B) (1) of this section</u>	168
<u>multiplied by the applicable percentage for that calendar year</u>	169
<u>under division (A) (1) to (5) of this section.</u>	170
The tax imposed under division (B) (1) <u>(B)</u> of this section	171
<u>on taxpayers with annual taxable gross receipts of one million</u>	172
<u>dollars or less for the calendar year shall be paid not later</u>	173
than the tenth day of May of each year along with the annual tax	174
return. The tax imposed under divisions (B) (2), (3), and (4)	175
<u>division (B) of this section on all other taxpayers shall be</u>	176
paid not later than the tenth day of May of each year along with	177
the first quarter tax return.	178
(C) (1) Each taxpayer may exclude the first one million	179
dollars of taxable gross receipts for a calendar year. Calendar	180

quarter taxpayers shall apply the full exclusion amount to the 181
first calendar quarter return the taxpayer files that calendar 182
year and may carry forward and apply any unused exclusion amount 183
to subsequent calendar quarters within that same calendar year. 184

(2) A taxpayer switching from a calendar year tax period 185
to a calendar quarter tax period may, for the first quarter of 186
the change, apply the full one-million-dollar exclusion amount 187
to the first calendar quarter return the taxpayer files that 188
calendar year. Such taxpayers may carry forward and apply any 189
unused exclusion amount to subsequent calendar quarters within 190
that same calendar year. The tax rate shall be based on the rate 191
imposed that calendar quarter when the taxpayer switches from a 192
calendar year to a calendar quarter tax period. 193

(3) A taxpayer shall not exclude more than one million 194
dollars pursuant to division (C) of this section in a calendar 195
year. 196

Section 2. That existing sections 5751.02 and 5751.03 of 197
the Revised Code are hereby repealed. 198