

**As Introduced**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 234**

**Representatives Gross, McClain**

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

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**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
<del>(2)</del> <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
<del>(3)</del> <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
<del>(4)</del> <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 <del>(B) (1)</del> <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 <del>divisions (B) (2), (3), and (4)</del>	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