

**OPINION NO. 77-045****Syllabus:**

Where a board of county commissioners has by resolution enacted a county sales tax pursuant to R.C. 5739.021 and a county use tax pursuant to R.C. 5741.021, a referendum petition with respect to such resolutions must meet the requirements of R.C. 305.31 to R.C. 305.99 for a referendum petition as to both of the resolutions in question.

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**To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio**  
**By: William J. Brown, Attorney General, August 4, 1977**

I have before me your request for my opinion as to whether a petition for referendum on a county sales tax resolution adopted pursuant to R.C. 5739.021 must refer to or incorporate a use tax resolution concurrently adopted pursuant to R.C. 5741.021.

From information you have supplied, it is my understanding that your question arises from resolutions adopted by the Board of County Commissioners on March 15, 1977, one resolution levying a sales tax pursuant to R.C. 5739.021 and the other resolution levying a use tax as specified by R.C. 5741.021. Within thirty days from the date of passage of those resolutions as required by Section 305.31, R.C. referendum petitions were filed with the county auditor challenging the "piggyback" sales tax resolution. Your opinion request was received subsequent to the thirty day period for filing the referendum petitions and inquired whether the result of a single referendum petition relative to the sales tax resolution adopted pursuant to R.C. 5739.021 assuming the sales tax resolution should be rejected in the next succeeding general election, would be

to reject as well the accompanying use tax resolution pursuant to R.C. 5741.021.

R.C. 5739.021 provides that for the purpose of obtaining additional general revenues, a county may levy a tax at the rate of one-half of one percent in addition to the tax on retail sales imposed by R.C. 5739.02. R.C. 5739.021 sets forth specific procedures relative to the adoption and effective date of a resolution for such a levy.

R.C. 5741.021, set forth below, specifies that any county which levies a sales tax pursuant to R.C. 5739.021 shall also levy a use tax at the same rate.

For the purpose of providing additional general revenues for the county and paying the expenses of administering such levy, any county which levies a tax pursuant to section 5739.021 (5739.02.1) of the Revised Code shall levy a tax at the same rate levied pursuant to section 5739.021 (5739.02.1) of the Revised Code on the storage, use, or other consumption in the county of motor vehicles acquired on or after the effective date of this act by a transaction subject to the tax imposed by section 5739.02 of the Revised Code, and, in addition to that imposed by section 5741.02 of the Revised Code, on the storage, use, or other consumption in the county of tangible personal property which is subject to the tax levied by this state as provided in section 5741.02 of the Revised Code. The tax shall be levied pursuant to a resolution of the board of county commissioners which shall be adopted after publication of notice and hearing in the same manner as provided in section 5739.021 (5739.02.1) of the Revised Code. Such resolution shall be adopted and shall become effective on the same day as the resolution adopted by the board of county commissioners levying a sales tax pursuant to section 5739.021 (5739.02.1) of the Revised Code and shall remain in effect until such sales tax is repealed.  
(Emphasis added)

It is apparent from the terms of R.C. 5741.021 that the county use tax therein described must be adopted when the county sales tax is adopted. There is no provision for the county sales tax under R.C. 5739.021 to exist in the absence of the use tax under R.C. 5741.021, or conversely, for the use tax to exist in the absence of the sales tax. It follows that a referendum petition on a resolution to levy a sales tax pursuant to R.C. 5739.021 cannot be said to affect only the sales tax. Therefore, a referendum petition on the sales tax will affect both the sales tax resolution adopted pursuant to R.C. 5739.021 and the use tax resolution adopted pursuant to R.C. 5741.021, or it will affect neither of them.

The statutory provisions for referendum on specified resolutions of boards of county commissioners are set forth

in R.C. 305.31 to R.C. 305.99. R.C. 305.31, in pertinent part provides:

The procedure for submitting to a referendum any resolution adopted by a board of county commissioners pursuant to Section 322.02, 324.02, 4504.02, 5739.021, or 5741.021 of the Revised Code shall be as follows. . . (Emphasis added)

It is a long settled principle of statutory interpretation that there is a presumption that the General Assembly had a definite purpose in each and every one of its enactments and all its provisions and that its legislative efforts should not be in vain. State ex rel. Crawford and McGregor, 44 Ohio St. 628 (1887). R.C. 305.31, as set forth in pertinent part above, makes specific provision for referendum on both a sales tax resolution adopted pursuant to R.C. 5739.021 and a use tax resolution adopted pursuant to R.C. 5741.021. Since, as discussed above, there is no statutory provision for the adoption of one of these resolutions in the absence of an adoption of a resolution for the other, it is apparent that the terms of R.C. 305.31 require that a referendum petition on either resolution meet all the requirements of law, including those set forth in R.C. 305.32 and R.C. 305.33, as to both resolutions. There would otherwise be no purpose for the provision in R.C. 305.31 for a referendum on a resolution adopted pursuant to R.C. 5741.021.

In contrast to the provisions of R.C. 305.31, it should be noted that specific provision is made by R.C. 5739.022 for the repeal of a sales tax alone when such tax has been adopted and has become effective as an emergency measure pursuant to R.C. 5739.021. These provisions of R.C. 5739.021 make no reference to a repeal of the use tax and no such provision is, in fact, necessary since R.C. 5741.021 specifies that the use tax "shall remain in effect until such sales tax is repealed." Therefore, an election to repeal the sales tax will, in effect, automatically operate as a repeal of the use tax passed in conjunction with the sales tax. Because R.C. 5741.021 by its own terms specifies that the use tax required thereunder shall remain in effect until the repeal of the sales tax under R.C. 5739.021, there is no requirement for a specific repeal of the use tax.

There is, however, no similar statutory provision in respect to a referendum on a resolution to levy the tax as contrasted with a repeal of a tax already in effect. In contrast, R.C. 305.31 specifically provides for referendum on both resolutions adopted pursuant to R.C. 5739.021 and 5741.021. It is, therefore, my conclusion that a referendum petition on a sales tax resolution adopted pursuant to R.C. 5739.021 will of necessity affect the concurrent use tax resolution adopted pursuant to R.C. 5741.021. Because the results of referendum on an R.C. 5739.021 resolution will of necessity affect a use tax resolution adopted pursuant to R.C. 5741.021, such resolution must be considered as subject to the requirements of R.C. 305.31 to R.C. 305.99 in respect to both the sales and use tax resolutions.

In specific answer to your question it is my opinion, and you are so advised that where a board of county commissioners has by resolution enacted a county sales tax pursuant to R.C. 5739.021 and a county use tax pursuant to R.C. 5741.021, a referendum petition with respect to such resolutions must meet

the requirements of R.C. 305.31 to R.C. 305.99 for a referendum petition as to both of the resolutions in question.