

AN ACT

To amend section 5741.02 and to enact sections 323.122 and 3319.284 of the Revised Code and to amend Sections 1.09 and 35.03 of H.B. 675 of the 124th General Assembly and to amend Section 3 of Am. Sub. S.B. 143 of the 124th General Assembly to extend the time within which members of the National Guard and reserve components of the Armed Forces of the United States who have been called to active duty must pay real property and manufactured home taxes, to provide for extension of educator licenses for active duty members, to delay the effective date of certain sales tax law changes, to exempt leased computer equipment and related software from use taxation if it is held temporarily in Ohio by a third party, to amend the version of section 5741.02 of the Revised Code that is scheduled to take effect July 1, 2003, to continue the amendment to that section by this act on and after that date, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 5741.02 be amended and sections 323.122 and 3319.284 of the Revised Code be enacted to read as follows:

Sec. 323.122. (A) As used in this section:

(1) "Active duty" has the same meaning as in division (F) of section 5919.34 of the Revised Code.

(2) "Dependent parent" means a parent who, at the time the member was activated, received from the member at least half of the dependent parent's support, including food, shelter, clothing, and medical and dental care.

(B) This section applies to any real property or manufactured or mobile

home that is:

(1) Owned by a member of the national guard or a member of a reserve component of the armed forces of the United States who is called to active duty;

(2) Owned by the spouse of such a member;

(3) Owned jointly by such a member and that member's spouse or dependent parent; or

(4) Owned by the dependent parent of such a member who dies during such duty or as the result of wounds or illness incurred during such duty.

(C) The member, the member's spouse, or the member's parent, as applicable, may apply to the county treasurer for an extension for the payment of taxes and assessments charged against the real property or manufactured or mobile home and payable during the period of the member's duty service and the six months ensuing termination thereof. Additionally, application may be made on behalf of a member under a power of attorney granted by the member. Application shall be made not later than the last day of the sixth month after the month in which the member's duty terminates. The applicant shall provide evidence satisfactory to the county treasurer to demonstrate eligibility for the extension as described in division (B) of this section.

If the county treasurer determines that the applicant qualifies for an extension under this section, the county treasurer shall enter into a contract with the applicant for payment of the taxes and assessments in installments in the same manner as, and subject to the same terms and conditions of, contracts for the payment of delinquent taxes pursuant to section 323.31 of the Revised Code, except that the contract shall specify that payments shall begin in the seventh month after the member's duty terminates. Notwithstanding sections 319.49, 323.01, 323.121, 323.132, 4503.06, 5721.01, and 5721.011 of the Revised Code, taxes and assessments, payment of which has been extended under this section, do not constitute delinquent taxes and shall not be placed on the delinquent land list or delinquent manufactured home tax list unless the contract becomes void, and a new contract is not entered into, pursuant to section 323.31 of the Revised Code.

such taxes or assessments are paid by the member, spouse, or parent to an agent as part of a mortgage loan installment payment, the agent shall deduct the portion of the payment that represents such taxes and assessments from the amount of each such payment payable during the period of extension prescribed by division (C) of this section.

(E) If the member, the member's spouse, or the member's parent has entered into a contract pursuant to this section before the first day of the seventh month after the month in which the member's duty terminates, the county auditor and treasurer shall remove from the tax list and duplicate, respectively, any penalties and interest that were charged under section 323.121 or 4503.06 of the Revised Code during the member's duty and before the first day of the seventh month after the month in which the member's duty terminates.

(F) Notwithstanding section 323.131 of the Revised Code, a county treasurer shall include a notice of, and information about, the extension provided in this section on or with tax bills mailed or delivered under section 323.13 or 4503.06 of the Revised Code or by providing such notice and information to a newspaper of general circulation in the county when tax bills are mailed or delivered under those sections.

Sec. 3319.284. A member of the national guard or a member of a reserve component of the armed forces of the United States who is called to active duty and who, at the time of deployment, holds a valid educator license under this chapter is entitled to have the license extended for a period of time commensurate with the length of active duty service, provided the educator is honorably released from such active duty service. No extension granted pursuant to this section in any year shall be deemed to have expired before the next following thirtieth day of June.

As used in this section, "active duty" has the same meaning as in section 5919.34 of the Revised Code.

Sec. 5741.02. (A) For the use of the general revenue fund of the state, an excise tax is hereby levied on the storage, use, or other consumption in this state of tangible personal property or the benefit realized in this state of any service provided. The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

(B) Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state; provided, that the consumer shall be relieved from further liability for the tax if the tax has been paid to a seller in accordance with section 5741.04 of the Revised

Code or prepaid by the seller in accordance with section 5741.06 of the Revised Code.

(C) The tax does not apply to the storage, use, or consumption in this state of the following described tangible personal property or services, nor to the storage, use, or consumption or benefit in this state of tangible personal property or services purchased under the following described circumstances:

(1) When the sale of property or service in this state is subject to the excise tax imposed by sections 5739.01 to 5739.31 of the Revised Code, provided said tax has been paid;

(2) Except as provided in division (D) of this section, tangible personal property or services, the acquisition of which, if made in Ohio, would be a sale not subject to the tax imposed by sections 5739.01 to 5739.31 of the Revised Code;

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and section 5739.02 of the Revised Code;

(4) Transient use of tangible personal property in this state by a nonresident tourist or vacationer, or a non-business use within this state by a nonresident of this state, if the property so used was purchased outside this state for use outside this state and is not required to be registered or licensed under the laws of this state;

(5) Tangible personal property or services rendered upon which taxes have been paid to another jurisdiction to the extent of the amount of the tax paid to such other jurisdiction. Where the amount of the tax imposed by this section and imposed pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code exceeds the amount paid to another jurisdiction, the difference shall be allocated between the tax imposed by this section and any tax imposed by a county or a transit authority pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion to the respective rates of such taxes.

As used in this subdivision, "taxes paid to another jurisdiction" means the total amount of retail sales or use tax or similar tax based upon the sale,

purchase, or use of tangible personal property or services rendered legally, levied by and paid to another state or political subdivision thereof, or to the District of Columbia, where the payment of such tax does not entitle the taxpayer to any refund or credit for such payment.

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner;

(8) Computer equipment and related software leased from a lessor located outside this state and initially received in this state on behalf of the consumer by a third party that will retain possession of such property for not more than ninety days and that will, within that ninety-day period, deliver such property to the consumer at a location outside this state. Division (C)(8) of this section does not provide exemption from taxation for any otherwise taxable charges associated with such property while it is in this state or for any subsequent storage, use, or consumption of such property in this state by or on behalf of the consumer.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the consumer shall furnish to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. If the transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the exemption certificate shall be signed by both the contractor and contractee, and the contractee shall be deemed to be the consumer of all items purchased under the claim of exemption if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. If no certificate is furnished or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be

presumed that the tax applies. The failure to have so furnished or obtained a certificate shall not preclude a seller or consumer from establishing, within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, that the transaction is not subject to the tax.

(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

SECTION 2. That existing section 5741.02 of the Revised Code is hereby repealed.

SECTION 3. That the version of section 5741.02 of the Revised Code that is scheduled to take effect July 1, 2003, be amended to read as follows:

Sec. 5741.02. (A) For the use of the general revenue fund of the state, an excise tax is hereby levied on the storage, use, or other consumption in this state of tangible personal property or the benefit realized in this state of any service provided. The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

(B) Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state; provided, that the consumer shall be relieved from further liability for the tax if the tax has been paid to a seller in accordance with section 5741.04 of the Revised Code or prepaid by the seller in accordance with section 5741.06 of the Revised Code.

(C) The tax does not apply to the storage, use, or consumption in this

state of the following described tangible personal property or services, nor to the storage, use, or consumption or benefit in this state of tangible personal property or services purchased under the following described circumstances:

(1) When the sale of property or service in this state is subject to the excise tax imposed by sections 5739.01 to 5739.31 of the Revised Code, provided said tax has been paid;

(2) Except as provided in division (D) of this section, tangible personal property or services, the acquisition of which, if made in Ohio, would be a sale not subject to the tax imposed by sections 5739.01 to 5739.31 of the Revised Code;

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and section 5739.02 of the Revised Code;

(4) Transient use of tangible personal property in this state by a nonresident tourist or vacationer, or a non-business use within this state by a nonresident of this state, if the property so used was purchased outside this state for use outside this state and is not required to be registered or licensed under the laws of this state;

(5) Tangible personal property or services rendered, upon which taxes have been paid to another jurisdiction to the extent of the amount of the tax paid to such other jurisdiction. Where the amount of the tax imposed by this section and imposed pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code exceeds the amount paid to another jurisdiction, the difference shall be allocated between the tax imposed by this section and any tax imposed by a county or a transit authority pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion to the respective rates of such taxes.

As used in this subdivision, "taxes paid to another jurisdiction" means the total amount of retail sales or use tax or similar tax based upon the sale, purchase, or use of tangible personal property or services rendered legally, levied by and paid to another state or political subdivision thereof, or to the District of Columbia, where the payment of such tax does not entitle the

taxpayer to any refund or credit for such payment.

(6) The transfer of a used manufactured home or used mobile home, as defined by section 5739.0210 of the Revised Code, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner;

(8) Computer equipment and related software leased from a lessor located outside this state and initially received in this state on behalf of the consumer by a third party that will retain possession of such property for not more than ninety days and that will, within that ninety-day period, deliver such property to the consumer at a location outside this state. Division (C)(8) of this section does not provide exemption from taxation for any otherwise taxable charges associated with such property while it is in this state or for any subsequent storage, use, or consumption of such property in this state by or on behalf of the consumer.

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E)(1) of section 5739.01 of the Revised Code from the tax imposed by section 5739.02 of the Revised Code, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

(E)(1) If any transaction is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the consumer shall provide to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not subject to the tax. The certificate shall be provided either in a hard copy form or electronic form, as prescribed by the tax commissioner. If the transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the exemption certificate shall be provided by both the contractor and contractee. Such contractee shall be deemed to be the consumer of all items purchased under the claim of exemption if it is subsequently determined that the exemption is not properly claimed. The certificate shall be in such form as the tax commissioner by rule prescribes. The seller shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.

(2) If no certificate is provided or obtained within the period for filing the return for the period in which the transaction is consummated, it shall be presumed that the tax applies. The failure to have so provided or obtained a certificate shall not preclude a seller or consumer from establishing, within one hundred twenty days of the giving of notice by the commissioner of intention to levy an assessment, that the transaction is not subject to the tax.

(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates, and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section, may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

(G) For the purpose of the proper administration of sections 5741.01 to 5741.22 of the Revised Code, and to prevent the evasion of the tax hereby levied, it shall be presumed that any use, storage, or other consumption of tangible personal property in this state is subject to the tax until the contrary is established.

SECTION 4. That the existing version of section 5741.02 of the Revised Code that is scheduled to take effect July 1, 2003, is hereby repealed.

SECTION 5. That Sections 3 and 4 of this act take effect July 1, 2003.

SECTION 6. That Sections 1.09 and 35.03 of H.B. 675 of the 124th General Assembly be amended to read as follows:

Sec. 1.09. Sections 1.07 and 1.08 of ~~this act~~ H.B. 675 of the 124th General Assembly take effect ~~July 1, 2003~~ January 1, 2004.

Sec. 35.03. Section 5739.031 of the Revised Code takes effect ~~July 1, 2003~~ January 1, 2004.

SECTION 7. That existing Sections 1.09 and 35.03 of H.B. 675 of the 124th General Assembly are hereby repealed.

SECTION 8. That Section 3 of Am. Sub. S.B. 143 of the 124th General Assembly be amended to read as follows:

Sec. 3. (A) Sections ~~5739.021, 5739.023, 5739.026, 5739.031, 5739.033,~~ 5739.12, 5741.02, and 5741.12, and division (I)(7) of section 5741.01 of the Revised Code, as amended by ~~this act~~ Am. Sub. S.B. 143 of the 124th General Assembly, and sections 306.73, 5703.65, 5739.04, 5739.06, 5741.05, and 5741.08 of the Revised Code, as enacted by ~~this act~~ Am. Sub. S.B. 143 of the 124th General Assembly, shall take effect July 1, 2003.

(B) Sections 5739.021, 5739.023, 5739.026, 5739.031, and 5739.033 of the Revised Code, as amended by Am. Sub. S.B. 143 of the 124th General Assembly, shall take effect January 1, 2004.

SECTION 9. That existing Section 3 of Am. Sub. S.B. 143 of the 124th General Assembly is hereby repealed.

SECTION 10. The amendments to sections 5739.021, 5739.023, and 5739.026 of the Revised Code by Am. Sub. S.B. 143 of the 124th General Assembly apply to levies proposed by a resolution adopted on or after January 1, 2004, and do not apply to levies proposed by a resolution adopted before that date.

SECTION 11. Sections 6, 7, 8, and 9 of this act intend to delay the scheduled July 1, 2003, effective date of sections 5739.021, 5739.023, 5739.026, 5739.031, and 5739.033 of the Revised Code until January 1, 2004.

SECTION 12. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reasons for such necessity are that active duty military personnel may face real economic hardships while serving their country and urgently need the financial relief provided by the real property and manufactured home tax extensions authorized by this act. Therefore, this act shall go into immediate effect.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 47

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____