

As Introduced

**126th General Assembly
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S. B. No. 269

**Senators Amstutz, Austria, Clancy, Gardner, Grendell, Jacobson, Jordan,
Padgett, Schuler, Wachtmann, Zurz**

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A B I L L

To amend section 5741.02 of the Revised Code to 1
exempt from the use tax items held by a person, 2
but not for that person's own use, and donated to 3
a charitable organization. 4

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

Section 1. That section 5741.02 of the Revised Code be 5
amended to read as follows: 6

Sec. 5741.02. (A)(1) For the use of the general revenue fund 7
of the state, an excise tax is hereby levied on the storage, use, 8
or other consumption in this state of tangible personal property 9
or the benefit realized in this state of any service provided. The 10
tax shall be collected as provided in section 5739.025 of the 11
Revised Code, provided that on and after July 1, 2003, and on or 12
before June 30, 2005, the rate of the tax shall be six per cent. 13
On and after July 1, 2005, the rate of the tax shall be five and 14
one-half per cent. 15

(2) In the case of the lease or rental, with a fixed term of 16
more than thirty days or an indefinite term with a minimum period 17
of more than thirty days, of any motor vehicles designed by the 18
manufacturer to carry a load of not more than one ton, watercraft, 19

outboard motor, or aircraft, or of any tangible personal property,
other than motor vehicles designed by the manufacturer to carry a
load of more than one ton, to be used by the lessee or renter
primarily for business purposes, the tax shall be collected by the
seller at the time the lease or rental is consummated and shall be
calculated by the seller on the basis of the total amount to be
paid by the lessee or renter under the lease or rental agreement.
If the total amount of the consideration for the lease or rental
includes amounts that are not calculated at the time the lease or
rental is executed, the tax shall be calculated and collected by
the seller at the time such amounts are billed to the lessee or
renter. In the case of an open-end lease or rental, the tax shall
be calculated by the seller on the basis of the total amount to be
paid during the initial fixed term of the lease or rental, and for
each subsequent renewal period as it comes due. As used in this
division, "motor vehicle" has the same meaning as in section
4501.01 of the Revised Code, and "watercraft" includes an outdrive
unit attached to the watercraft.

(3) Except as provided in division (A)(2) of this section, in
the case of a transaction, the price of which consists in whole or
part of the lease or rental of tangible personal property, the tax
shall be measured by the installments of those leases or rentals.

(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

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consumption in this state of the following described tangible 52
personal property or services, nor to the storage, use, or 53
consumption or benefit in this state of tangible personal property 54
or services purchased under the following described circumstances: 55

(1) When the sale of property or service in this state is 56
subject to the excise tax imposed by sections 5739.01 to 5739.31 57
of the Revised Code, provided said tax has been paid; 58

(2) Except as provided in division (D) of this section, 59
tangible personal property or services, the acquisition of which, 60
if made in Ohio, would be a sale not subject to the tax imposed by 61
sections 5739.01 to 5739.31 of the Revised Code; 62

(3) Property or services, the storage, use, or other 63
consumption of or benefit from which this state is prohibited from 64
taxing by the Constitution of the United States, laws of the 65
United States, or the Constitution of this state. This exemption 66
shall not exempt from the application of the tax imposed by this 67
section the storage, use, or consumption of tangible personal 68
property that was purchased in interstate commerce, but that has 69
come to rest in this state, provided that fuel to be used or 70
transported in carrying on interstate commerce that is stopped 71
within this state pending transfer from one conveyance to another 72
is exempt from the excise tax imposed by this section and section 73
5739.02 of the Revised Code; 74

(4) Transient use of tangible personal property in this state 75
by a nonresident tourist or vacationer, or a ~~non-business~~ 76
nonbusiness use within this state by a nonresident of this state, 77
if the property so used was purchased outside this state for use 78
outside this state and is not required to be registered or 79
licensed under the laws of this state; 80

(5) Tangible personal property or services rendered, upon 81
which taxes have been paid to another jurisdiction to the extent 82

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.

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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.

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(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;

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(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.

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(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

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state or for any subsequent storage, use, or consumption of such property in this state by or on behalf of the consumer.

(9) Cigarettes that have a wholesale value of three hundred dollars or less used, stored, or consumed, but not for resale, in any month.

(10) Tangible personal property held by a person but not for that person's own use and donated by that person, without charge, to a nonprofit organization operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation. For the purposes of this division, "charitable purposes" has the same meaning as in division (B)(12) of section 5739.02 of the Revised Code.

(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) 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)(a) 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 in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner

prescribes.	145
(b) A seller that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under this chapter. Relief under this division from liability does not apply to any of the following:	146 147 148 149 150 151 152
(i) A seller that fraudulently fails to collect tax;	153
(ii) A seller that solicits consumers to participate in the unlawful claim of an exemption;	154 155
(iii) A seller that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the seller in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;	156 157 158 159 160 161 162 163
(iv) A seller that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (B) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.	164 165 166 167 168
(2) 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.	169 170 171
(3) If no certificate is provided or obtained within ninety days after the date on which the transaction is consummated, it shall be presumed that the tax applies. Failure to have so	172 173 174

provided or obtained a certificate shall not preclude a seller,
within one hundred twenty days after the tax commissioner gives
written notice of intent to levy an assessment, from either
establishing that the transaction is not subject to the tax, or
obtaining, in good faith, a fully completed exemption certificate.

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(4) If a transaction is claimed to be exempt under division
(B)(13) of section 5739.02 of the Revised Code, the contractor
shall obtain certification of the claimed exemption from the
contractee. This certification shall be in addition to an
exemption certificate provided by the contractor to the seller. A
contractee that provides a certification under this division shall
be deemed to be the consumer of all items purchased by the
contractor under the claim of exemption, if it is subsequently
determined that the exemption is not properly claimed. The
certification shall be in such form as the tax commissioner
prescribes.

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(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.

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(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

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established.

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(H) The tax collected by the seller from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional use tax pursuant to section 5741.021 or 5741.023 of the Revised Code and of transit authorities levying an additional use tax pursuant to section 5741.022 of the Revised Code. Except for the discount authorized under section 5741.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection of such tax.

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

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