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**Senators Amstutz, Austria, Clancy, Gardner, Grendell, Jacobson, Jordan,
Padgett, Schuler, Wachtmann, Zurz, Spada, Roberts, Fingerhut, Dann,
Armbruster, Carey, Goodman, Harris, Kearney, Schuring
Representatives Seitz, Latta, Gilb, Schaffer, Gibbs, Strahorn, Collier, Hagan,
Kilbane, Allen, Barrett, Brown, Carano, Cassell, Chandler, Core, DeBose,
Domenick, Evans, C., Evans, D., Fessler, Flowers, Garrison, Hartnett,
Harwood, Hughes, Law, McGregor, J., Oelslager, Otterman, Patton, S.,
Patton, T., Reidelbach, Setzer, Smith, G., Taylor, Ujvagi, Webster,
Willamowski, Wolpert, Yuko**

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A BILL

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, or to the state or its 4
political subdivisions for exclusively public 5
purposes. 6

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

Section 1. That section 5741.02 of the Revised Code be 7
amended to read as follows: 8

Sec. 5741.02. (A)(1) For the use of the general revenue fund 9
of the state, an excise tax is hereby levied on the storage, use, 10
or other consumption in this state of tangible personal property 11
or the benefit realized in this state of any service provided. The 12

tax shall be collected as provided in section 5739.025 of the 13
Revised Code, provided that on and after July 1, 2003, and on or 14
before June 30, 2005, the rate of the tax shall be six per cent. 15
On and after July 1, 2005, the rate of the tax shall be five and 16
one-half per cent. 17

(2) In the case of the lease or rental, with a fixed term of 18
more than thirty days or an indefinite term with a minimum period 19
of more than thirty days, of any motor vehicles designed by the 20
manufacturer to carry a load of not more than one ton, watercraft, 21
outboard motor, or aircraft, or of any tangible personal property, 22
other than motor vehicles designed by the manufacturer to carry a 23
load of more than one ton, to be used by the lessee or renter 24
primarily for business purposes, the tax shall be collected by the 25
seller at the time the lease or rental is consummated and shall be 26
calculated by the seller on the basis of the total amount to be 27
paid by the lessee or renter under the lease or rental agreement. 28
If the total amount of the consideration for the lease or rental 29
includes amounts that are not calculated at the time the lease or 30
rental is executed, the tax shall be calculated and collected by 31
the seller at the time such amounts are billed to the lessee or 32
renter. In the case of an open-end lease or rental, the tax shall 33
be calculated by the seller on the basis of the total amount to be 34
paid during the initial fixed term of the lease or rental, and for 35
each subsequent renewal period as it comes due. As used in this 36
division, "motor vehicle" has the same meaning as in section 37
4501.01 of the Revised Code, and "watercraft" includes an outdrive 38
unit attached to the watercraft. 39

(3) Except as provided in division (A)(2) of this section, in 40
the case of a transaction, the price of which consists in whole or 41
part of the lease or rental of tangible personal property, the tax 42
shall be measured by the installments of those leases or rentals. 43

(B) Each consumer, storing, using, or otherwise consuming in 44

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.

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(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:

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(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;

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(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;

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(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

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5739.02 of the Revised Code;

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(4) Transient use of tangible personal property in this state
by a nonresident tourist or vacationer, or a ~~non-business~~
nonbusiness 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;

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(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.

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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

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order of such a practitioner. 107

(8) Computer equipment and related software leased from a 108
lessor located outside this state and initially received in this 109
state on behalf of the consumer by a third party that will retain 110
possession of such property for not more than ninety days and that 111
will, within that ninety-day period, deliver such property to the 112
consumer at a location outside this state. Division (C)(8) of this 113
section does not provide exemption from taxation for any otherwise 114
taxable charges associated with such property while it is in this 115
state or for any subsequent storage, use, or consumption of such 116
property in this state by or on behalf of the consumer. 117

(9) Cigarettes that have a wholesale value of three hundred 118
dollars or less used, stored, or consumed, but not for resale, in 119
any month. 120

(10) Tangible personal property held for sale by a person but 121
not for that person's own use and donated by that person, without 122
charge or other compensation, to either of the following: 123

(a) A nonprofit organization operated exclusively for 124
charitable purposes in this state, no part of the net income of 125
which inures to the benefit of any private shareholder or 126
individual and no substantial part of the activities of which 127
consists of carrying on propaganda or otherwise attempting to 128
influence legislation; or 129

(b) This state or any political subdivision of this state, 130
but only if donated for exclusively public purposes. 131

For the purposes of division (C)(10) of this section, 132
"charitable purposes" has the same meaning as in division (B)(12) 133
of section 5739.02 of the Revised Code. 134

(D) The tax applies to the storage, use, or other consumption 135
in this state of tangible personal property or services, the 136

acquisition of which at the time of sale was excepted under 137
division (E) of section 5739.01 of the Revised Code from the tax 138
imposed by section 5739.02 of the Revised Code, but which has 139
subsequently been temporarily or permanently stored, used, or 140
otherwise consumed in a taxable manner. 141

(E)(1)(a) If any transaction is claimed to be exempt under 142
division (E) of section 5739.01 of the Revised Code or under 143
section 5739.02 of the Revised Code, with the exception of 144
divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised 145
Code, the consumer shall provide to the seller, and the seller 146
shall obtain from the consumer, a certificate specifying the 147
reason that the transaction is not subject to the tax. The 148
certificate shall be in such form, and shall be provided either in 149
a hard copy form or electronic form, as the tax commissioner 150
prescribes. 151

(b) A seller that obtains a fully completed exemption 152
certificate from a consumer is relieved of liability for 153
collecting and remitting tax on any sale covered by that 154
certificate. If it is determined the exemption was improperly 155
claimed, the consumer shall be liable for any tax due on that sale 156
under this chapter. Relief under this division from liability does 157
not apply to any of the following: 158

(i) A seller that fraudulently fails to collect tax; 159

(ii) A seller that solicits consumers to participate in the 160
unlawful claim of an exemption; 161

(iii) A seller that accepts an exemption certificate from a 162
consumer that claims an exemption based on who purchases or who 163
sells property or a service, when the subject of the transaction 164
sought to be covered by the exemption certificate is actually 165
received by the consumer at a location operated by the seller in 166
this state, and this state has posted to its web site an exemption 167

certificate form that clearly and affirmatively indicates that the
claimed exemption is not available in this state;

(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.

(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.

(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
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.

(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.

(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 199
failed to establish that the transactions were not subject to the 200
tax during the one-hundred-twenty-day period allowed under 201
division (E) of this section, may present to the tax commissioner 202
additional evidence to prove that the transactions were exempt. 203
The seller shall file such evidence within ninety days of the 204
receipt by the seller of the notice of assessment, except that, 205
upon application and for reasonable cause, the tax commissioner 206
may extend the period for submitting such evidence thirty days. 207

(G) For the purpose of the proper administration of sections 208
5741.01 to 5741.22 of the Revised Code, and to prevent the evasion 209
of the tax hereby levied, it shall be presumed that any use, 210
storage, or other consumption of tangible personal property in 211
this state is subject to the tax until the contrary is 212
established. 213

(H) The tax collected by the seller from the consumer under 214
this chapter is not part of the price, but is a tax collection for 215
the benefit of the state, and of counties levying an additional 216
use tax pursuant to section 5741.021 or 5741.023 of the Revised 217
Code and of transit authorities levying an additional use tax 218
pursuant to section 5741.022 of the Revised Code. Except for the 219
discount authorized under section 5741.12 of the Revised Code and 220
the effects of any rounding pursuant to section 5703.055 of the 221
Revised Code, no person other than the state or such a county or 222
transit authority shall derive any benefit from the collection of 223
such tax. 224

Section 2. That existing section 5741.02 of the Revised Code 225
is hereby repealed. 226