

**As Reported by the House Ways and Means Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Am. Sub. S. B. No. 269**

**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**

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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, 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 45  
the benefit of any service provided, shall be liable for the tax, 46  
and such liability shall not be extinguished until the tax has 47  
been paid to this state; provided, that the consumer shall be 48

relieved from further liability for the tax if the tax has been 49  
paid to a seller in accordance with section 5741.04 of the Revised 50  
Code or prepaid by the seller in accordance with section 5741.06 51  
of the Revised Code. 52

(C) The tax does not apply to the storage, use, or 53  
consumption in this state of the following described tangible 54  
personal property or services, nor to the storage, use, or 55  
consumption or benefit in this state of tangible personal property 56  
or services purchased under the following described circumstances: 57

(1) When the sale of property or service in this state is 58  
subject to the excise tax imposed by sections 5739.01 to 5739.31 59  
of the Revised Code, provided said tax has been paid; 60

(2) Except as provided in division (D) of this section, 61  
tangible personal property or services, the acquisition of which, 62  
if made in Ohio, would be a sale not subject to the tax imposed by 63  
sections 5739.01 to 5739.31 of the Revised Code; 64

(3) Property or services, the storage, use, or other 65  
consumption of or benefit from which this state is prohibited from 66  
taxing by the Constitution of the United States, laws of the 67  
United States, or the Constitution of this state. This exemption 68  
shall not exempt from the application of the tax imposed by this 69  
section the storage, use, or consumption of tangible personal 70  
property that was purchased in interstate commerce, but that has 71  
come to rest in this state, provided that fuel to be used or 72  
transported in carrying on interstate commerce that is stopped 73  
within this state pending transfer from one conveyance to another 74  
is exempt from the excise tax imposed by this section and section 75  
5739.02 of the Revised Code; 76

(4) Transient use of tangible personal property in this state 77  
by a nonresident tourist or vacationer, or a ~~non-business~~ 78  
nonbusiness use within this state by a nonresident of this state, 79

if the property so used was purchased outside this state for use 80  
outside this state and is not required to be registered or 81  
licensed under the laws of this state; 82

(5) Tangible personal property or services rendered, upon 83  
which taxes have been paid to another jurisdiction to the extent 84  
of the amount of the tax paid to such other jurisdiction. Where 85  
the amount of the tax imposed by this section and imposed pursuant 86  
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 87  
exceeds the amount paid to another jurisdiction, the difference 88  
shall be allocated between the tax imposed by this section and any 89  
tax imposed by a county or a transit authority pursuant to section 90  
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 91  
to the respective rates of such taxes. 92

As used in this subdivision, "taxes paid to another 93  
jurisdiction" means the total amount of retail sales or use tax or 94  
similar tax based upon the sale, purchase, or use of tangible 95  
personal property or services rendered legally, levied by and paid 96  
to another state or political subdivision thereof, or to the 97  
District of Columbia, where the payment of such tax does not 98  
entitle the taxpayer to any refund or credit for such payment. 99

(6) The transfer of a used manufactured home or used mobile 100  
home, as defined by section 5739.0210 of the Revised Code, made on 101  
or after January 1, 2000; 102

(7) Drugs that are or are intended to be distributed free of 103  
charge to a practitioner licensed to prescribe, dispense, and 104  
administer drugs to a human being in the course of a professional 105  
practice and that by law may be dispensed only by or upon the 106  
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  
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.

(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 for sale by a person but  
not for that person's own use and donated by that person, without  
charge or other compensation, to either of the following:

(a) 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; or

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

For the purposes of division (C)(10) of this section,  
"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 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 168  
claimed exemption is not available in this state; 169

(iv) A seller that accepts an exemption certificate from a 170  
consumer who claims a multiple points of use exemption under 171  
division (B) of section 5739.033 of the Revised Code, if the item 172

purchased is tangible personal property, other than prewritten  
computer software. 173  
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(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. 175  
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(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. 178  
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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. 186  
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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. 197  
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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.

(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.

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