

AN ACT

To amend sections 5739.01, 5739.031, 5739.033, 5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 and to repeal section 5740.10 of the Revised Code to phase in destination-based sourcing of sales for small businesses, by January 1, 2008.

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

SECTION 1. That sections 5739.01, 5739.031, 5739.033, 5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 of the Revised Code be amended to read as follows:

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility

service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service, other than mobile telecommunications service after July 31, 2002, is or is to be provided, but does not include transactions by which local telecommunications service is obtained from a coin-operated telephone and paid for by using coin;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided.

(p) After July 31, 2002, mobile telecommunications service is or is to be provided when that service is situated to this state pursuant to the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 626 to 632 (2000), 4 U.S.C.A. 116 to 126, as amended.

(q) On and after August 1, 2003, satellite broadcasting service is or is to be provided;

(r) On and after August 1, 2003, personal care service is or is to be

provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.

(s) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;

(t) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.

(u) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that has less than five thousand dollars in sales of such service during the calendar year.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of

such service is never a construction contract.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) ~~;~~(9) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale.

(9) On and after August 1, 2003, all transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business.

Except ~~Other than~~ as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of

sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4)(a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B)(43)(f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or

any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E)(1) of this section.

(6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by that person and used in performing the service, except for packaging materials sold by such person in a transaction separate from the service.

(E) "Retail sale" and "sales at retail" include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1)(a) "Price," except as provided in divisions (H)(2) and (3) of this section, means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

- (i) The vendor's cost of the property sold;
- (ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, and any other expense of the vendor;
- (iii) Charges by the vendor for any services necessary to complete the sale;
- (iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal

property or a service, including transportation, shipping, postage, handling, crating, and packing.

(v) Installation charges;

(vi) The value of exempt tangible personal property given to the consumer where taxable and exempt tangible personal property have been bundled together and sold by the vendor as a single product or piece of merchandise.

(b) "Price" does not include any of the following:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in this division, "watercraft" includes an outdrive unit attached to the watercraft.

(4) In the case of a transaction in which telecommunications service, mobile telecommunications service, or cable television service is sold in a bundled transaction with other distinct services for a single price that is not itemized, the entire price is subject to the taxes levied under sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code, unless the vendor can reasonably identify the nontaxable portion from its books and records kept in the regular course of business. Upon the request of the consumer, the vendor shall disclose to the consumer the selling price for the

taxable services included in the selling price for the taxable and nontaxable services billed on an aggregated basis. The burden of proving any nontaxable charges is on the vendor.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or

transportation of property or personnel to or from a place where a service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property that is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and that retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used directly in the rendition of a public utility service.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county that is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to section 306.03 of the Revised Code or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority that includes territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county that is a

transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting

business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) "Telecommunications service" means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. "Telecommunications service" includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private communications service purchased from another telecommunications

service provider, and other related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. "Telecommunications service" does not include any of the following:

(1) Sales of telecommunications service billed to persons before January 1, 2004, by telephone companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;

(2) Sales of telecommunications service to a provider of telecommunications service or of mobile telecommunications service, including access services, for use in providing telecommunications service or mobile telecommunications service;

(3) Value-added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;

(4) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code;

(5) After July 31, 2002, mobile telecommunications service.

(BB) "Laundry and dry cleaning services" means removing soil or dirt from towels, linens, articles of clothing, or other fabric items that belong to others and supplying towels, linens, articles of clothing, or other fabric items. "Laundry and dry cleaning services" does not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has

less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and also means conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person

who has less than five thousand dollars in sales of such service during the calendar year.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food or

food production, and includes but is not limited to cattle, sheep, goats, swine, and poultry. "Livestock" does not include invertebrates, fish, amphibians, reptiles, horses, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.

(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in section 927.51 of the Revised Code.

(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.

(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.

(TT) "Professional racing team" means a person that employs at least twenty full-time employees for the purpose of conducting a motor vehicle racing business for profit. The person must conduct the business with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. A "motor racing vehicle" means a vehicle for which the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as

full-time employment.

(UU)(1) "Lease" or "rental" means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. "Lease" or "rental" includes future options to purchase or extend, and agreements described in 26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property. "Lease" or "rental" does not include:

(a) A transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments;

(b) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one per cent of the total required payments;

(c) Providing tangible personal property along with an operator for a fixed or indefinite period of time, if the operator is necessary for the property to perform as designed. For purposes of this division, the operator must do more than maintain, inspect, or set-up the tangible personal property.

(2) "Lease" and "rental," as defined in division (UU) of this section, shall not apply to leases or rentals that exist before ~~the effective date of this amendment~~ June 26, 2003.

(3) "Lease" and "rental" have the same meaning as in division (UU)(1) of this section regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws.

(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.

(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code.

(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the

subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service.

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

(ZZ) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the consumer or at the direction of the consumer when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the consumer to the direct mail vendor for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(AAA) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(BBB) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(CCC) "Delivered electronically" means delivery of computer software from the seller to the purchaser by means other than tangible storage media.

(DDD) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or

enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(EEE)(1) Prior to July 1, 2004, "food" means cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. "Food" does not include spirituous liquors, wine, mixed beverages, or beer; soft drinks; sodas and beverages that are ordinarily dispensed at or in connection with bars and soda fountains, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(2) On and after July 1, 2004, "food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.

(3) As used in division (EEE)(2) of this section:

(a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume.

(b) "Dietary supplements" means any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by 21 C.F.R. 101.36; and that contains one or more of the following dietary ingredients:

- (i) A vitamin;
- (ii) A mineral;
- (iii) An herb or other botanical;
- (iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(3)(b)(i) to (v) of this section.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.

(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.

(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.

(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body. "Durable medical equipment" does not include mobility enhancing equipment.

(III) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, that is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle, that is not generally used by persons with normal mobility, and that does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. "Mobility enhancing equipment" does not include durable medical equipment.

(JJJ) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the human body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. As used in this division, "prosthetic device" does not

include corrective eyeglasses, contact lenses, or dental prosthesis.

(KKK)(1) "Fractional aircraft ownership program" means a program in which persons within an affiliated group sell and manage fractional ownership program aircraft, provided that at least one hundred airworthy aircraft are operated in the program and the program meets all of the following criteria:

(a) Management services are provided by at least one program manager within an affiliated group on behalf of the fractional owners.

(b) Each program aircraft is owned or possessed by at least one fractional owner.

(c) Each fractional owner owns or possesses at least a one-sixteenth interest in at least one fixed-wing program aircraft.

(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners.

(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program.

(2) As used in division (KKK)(1) of this section:

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section.

(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (KKK)(1)(e) of this section.

(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.

(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (KKK)(1)(e) of this section, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; the satisfaction of record-keeping requirements; and the development and use of an operations manual and a maintenance manual for the fractional aircraft

ownership program.

(e) "Program manager" means the person that offers management services to fractional owners pursuant to a management services agreement under division (KKK)(1)(e) of this section.

Sec. 5739.031. (A) Upon application, the tax commissioner may issue a direct payment permit that authorizes a consumer to pay the sales tax levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code or the use tax levied by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code directly to the state and waives the collection of the tax by the vendor or seller if payment directly to the state would improve compliance and increase the efficiency of the administration of the tax. The commissioner may adopt rules establishing the criteria for the issuance of such permits.

(B) Each permit holder, on or before the twenty-third day of each month, shall make and file with the treasurer of state a return for the preceding month in such form as is prescribed by the tax commissioner and shall pay the tax shown on the return to be due. The return shall show the sum of the prices of taxable merchandise used and taxable services received, the amount of tax due from the permit holder, and such other information as the commissioner deems necessary. The commissioner, upon written request by the permit holder, may extend the time for making and filing returns and paying the tax. If the commissioner determines that a permit holder's tax liability is not such as to merit monthly filing, the commissioner may authorize the permit holder to file returns and pay the tax at less frequent intervals. The treasurer of state shall show on the return the date it was filed and the amount of the payment remitted to the treasurer. Thereafter, the treasurer immediately shall transmit all returns filed under this section to the tax commissioner.

Any permit holder required to file a return and pay the tax under this section whose total payment for any calendar year equals or exceeds the amount shown in section 5739.032 of the Revised Code shall make each payment required by this section in the second ensuing and each succeeding year by electronic funds transfer as prescribed by, and on or before the dates specified in, section 5739.032 of the Revised Code, except as otherwise prescribed by that section.

(C) For purposes of reporting and remitting the tax, the price of tangible personal property or services purchased by, or of tangible personal property produced by, the permit holder shall be determined under division (G) of section 5741.01 of the Revised Code. Except as otherwise provided in division ~~(E)~~(E) of section 5739.033 of the Revised Code, the situs of any

purchase transaction made by the permit holder is the location where the tangible personal property or service is received by the permit holder.

(D) It shall be the duty of every permit holder required to make a return and pay its tax under this section to keep and preserve suitable records of purchases together with invoices of purchases, bills of lading, asset ledgers, depreciation schedules, transfer journals, and such other primary and secondary records and documents in such form as the commissioner requires. All such records and other documents shall be open during business hours to the inspection of the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, has authorized their destruction or disposal at an earlier date, or by order or by reason of a waiver of the four-year time limitation pursuant to section 5739.16 of the Revised Code requires that they be kept longer.

(E) A permit granted pursuant to this section shall continue to be valid until surrendered by the holder or canceled for cause by the tax commissioner.

(F) Persons who hold a direct payment permit that has not been canceled shall not be required to issue exemption certificates and shall not be required to pay the tax as prescribed in sections 5739.03, 5739.033, and 5741.12 of the Revised Code. Such persons shall notify vendors and sellers from whom purchases of tangible personal property or services are made, of their direct payment permit number and that the tax is being paid directly to the state. Upon receipt of such notice, such vendor or seller shall be absolved from all duties and liabilities imposed by section 5739.03 or 5741.04 of the Revised Code with respect to sales of tangible personal property or services to such permit holder.

Vendors and sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained. The receipts from such sales shall not be subject to the tax levied in section 5739.10 of the Revised Code.

Upon the cancellation or surrender of a direct payment permit, the provisions of sections 5739.03, 5741.04, and 5741.12 of the Revised Code shall immediately apply to all purchases made subsequent to such cancellation or surrender by the person who previously held such permit, and such person shall so notify vendors and sellers from whom purchases of tangible personal property or services are made, in writing, prior to or at the time of the first purchase after such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of sections 5739.03 and 5739.10 of the Revised Code and the seller shall be subject to

the provisions of section 5741.04 of the Revised Code, with respect to all sales subsequently made to such person. Failure of any such person to notify vendors or sellers from whom purchases of tangible personal property or services are made of the cancellation or surrender of a direct payment permit shall be considered as a refusal to pay the tax by the person required to issue such notice.

Sec. 5739.033. ~~This (A) Except as provided in division (B) of this section, divisions (C) to (I) of this section applies apply~~ to sales made on and after ~~July May 1, 2005 2006~~. Sales made before ~~July May 1, 2005 2006~~, are subject to section 5739.035 of the Revised Code. On and after January 1, 2005, any vendor may irrevocably elect to comply with divisions (C) to (I) of this section for all of the vendor's sales and places of business in this state.

The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section or, if applicable, under division (C) of section 5739.031 or section 5739.034 of the Revised Code, or at the situs of the sale as determined under section 5739.035 of the Revised Code. This section applies only to a vendor's or seller's obligation to collect and remit sales taxes under section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code or use taxes under section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code. Division (A) of this section does not apply in determining the jurisdiction for which sellers are required to collect the use tax under section 5741.05 of the Revised Code. This section does not affect the obligation of a consumer to remit use taxes on the storage, use, or other consumption of tangible personal property or on the benefit realized of any service provided, to the jurisdiction of that storage, use, or consumption, or benefit realized.

~~(A)(B)(1)~~ As used in this division, "delivery sale" means the taxable sale of tangible personal property or a service that is received by a consumer, or a donee designated by the consumer, in a taxing jurisdiction that is not the taxing jurisdiction in which the vendor has a fixed place of business.

(2)(a) A vendor with total delivery sales in calendar year 2005 that are less than thirty million dollars may continue to situs its sales under section 5739.035 of the Revised Code from May 1, 2006, through April 30, 2007.

(b) A vendor with total delivery sales in calendar year 2006 that are less than five million dollars may continue to situs its sales under section 5739.035 of the Revised Code from May 1, 2007, through December 31,

2007.

(c) Beginning January 1, 2008, all vendors shall source their sales under divisions (C) to (I) of this section.

(3) Once a vendor has total delivery sales that exceed the dollar amount in division (B)(2)(a) or (b) of this section, the vendor shall source its sales under divisions (C) to (I) of this section and shall continue to source its sales under those divisions, regardless of the amount of the vendor's total delivery sales in future years.

(C) Except for sales, other than leases, of titled motor vehicles, titled watercraft, or titled outboard motors as provided in section 5741.05 of the Revised Code, or as otherwise provided in this section and section 5739.034 ~~or 5740.10~~ of the Revised Code, all sales shall be sourced as follows:

(1) If the consumer or a donee designated by the consumer receives tangible personal property or a service at a vendor's place of business, the sale shall be sourced to that place of business.

(2) When the tangible personal property or service is not received at a vendor's place of business, the sale shall be sourced to the location known to the vendor where the consumer or the donee designated by the consumer receives the tangible personal property or service, including the location indicated by instructions for delivery to the consumer or the consumer's donee.

(3) If divisions ~~(A)~~(C)(1) and (2) of this section do not apply, the sale shall be sourced to the location indicated by an address for the consumer that is available from the vendor's business records that are maintained in the ordinary course of the vendor's business, when use of that address does not constitute bad faith.

(4) If divisions ~~(A)~~(C)(1), (2), and (3) of this section do not apply, the sale shall be sourced to the location indicated by an address for the consumer obtained during the consummation of the sale, including the address associated with the consumer's payment instrument, if no other address is available, when use of that address does not constitute bad faith.

(5) If divisions ~~(A)~~(C)(1), (2), (3), and (4) of this section do not apply, including in the circumstance where the vendor is without sufficient information to apply any of those divisions, the sale shall be sourced to the address from which tangible personal property was shipped, or from which the service was provided, disregarding any location that merely provided the electronic transfer of the property sold or service provided.

(6) As used in division ~~(A)~~(C) of this section, "receive" means taking possession of tangible personal property or making first use of a service. "Receive" does not include possession by a shipping company on behalf of a

consumer.

~~(B)(D)~~(1) Notwithstanding divisions ~~(A)(C)~~(1) to (5) of this section, a consumer that is not a holder of a direct payment permit granted under section 5739.031 of the Revised Code, that purchases computer software delivered electronically or a service for use in business, and that knows at the time of purchase that such software or service will be concurrently available for use in more than one taxing jurisdiction shall deliver to the vendor in conjunction with its purchase a multiple points of use exemption form prescribed by the tax commissioner disclosing this fact. On receipt of the multiple points of use exemption form, the vendor is relieved of its obligation to collect, pay, or remit the tax due, and the consumer must pay the tax directly to the state.

(2) A consumer that delivers such form to a vendor may use any reasonable, consistent, and uniform method of apportioning the tax due on the computer software delivered electronically or service for use in business that is supported by the consumer's business records as they existed at the time of the sale.

(3) The multiple points of use exemption form shall remain in effect for all future sales by the vendor to the consumer until it is revoked in writing by the consumer, except as to the consumer's specific apportionment of a subsequent sale under division ~~(B)(D)~~(2) of this section and the facts existing at the time of the sale.

~~(C)(E)~~ A person who holds a direct payment permit issued under section 5739.031 of the Revised Code is not required to deliver a multiple points of use exemption form to a vendor. But such permit holder shall comply with division ~~(B)(D)~~(2) of this section in apportioning the tax due on computer software delivered electronically or a service used in business that will be concurrently available for use in more than one taxing jurisdiction.

~~(D)(F)~~(1) Notwithstanding divisions ~~(A)(C)~~(1) to (5) of this section, the purchaser of direct mail that is not a holder of a direct payment permit shall provide to the vendor in conjunction with the purchase either a direct mail form prescribed by the tax commissioner, or information to show the jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of a direct mail form, the vendor is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay that tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the vendor to the purchaser until it is revoked in writing.

(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the vendor

shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the vendor is relieved of any further obligation to collect tax on any transaction where the vendor has collected tax pursuant to the delivery information provided by the purchaser.

(4) If the purchaser of direct mail does not have a direct payment permit and does not provide the vendor with either a direct mail form or delivery information as required by division ~~(D)~~(F)(1) of this section, the vendor shall collect the tax according to division ~~(A)~~(C)(5) of this section. Nothing in division ~~(D)~~(E)(4) of this section shall limit a purchaser's obligation to pay sales or use tax to any state to which the direct mail is delivered.

(5) If a purchaser of direct mail provides the vendor with documentation of direct payment authority, the purchaser shall not be required to provide a direct mail form or delivery information to the vendor.

~~(E)~~(G) If the vendor provides lodging to transient guests as specified in division (B)(2) of section 5739.01 of the Revised Code, the sale shall be sourced to the location where the lodging is located.

~~(F)~~(H)(1) As used in this division and division ~~(G)~~(I) of this section, "transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors with a gross vehicle weight rating of greater than ten thousand pounds, trailers, semi-trailers, or passenger buses that are registered through the international registration plan and are operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached to or secured on the items set forth in division ~~(F)~~(H)(1)(a), (b), or (c) of this section.

(2) A sale, lease, or rental of transportation equipment shall be sourced pursuant to division ~~(A)~~(C) of this section.

~~(G)~~(I)(1) A lease or rental of tangible personal property that does not require recurring periodic payments shall be sourced pursuant to division ~~(A)~~(C) of this section.

(2) A lease or rental of tangible personal property that requires recurring periodic payments shall be sourced as follows:

(a) In the case of a motor vehicle, other than a motor vehicle that is transportation equipment, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the address of the lessee or renter used for titling the motor vehicle pursuant to section 4505.06 of the Revised Code at the time the lease or rental is consummated.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

(b) In the case of an aircraft, other than an aircraft that is transportation equipment, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the primary property location at the time the lease or rental is consummated.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

(c) In the case of a watercraft or an outboard motor required to be titled in this state pursuant to Chapter 1548. of the Revised Code, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the address of the lessee or renter shown on the title.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for the initial lease or rental installment is the address of the lessee or renter shown on the title. For each subsequent installment, the primary property location is the primary property location for the period covered by the installment.

(d) In the case of a lease or rental of all other tangible personal property, other than transportation equipment, such lease or rental shall be sourced as follows:

(i) For a lease or rental that is taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the lease or rental shall be sourced pursuant to division ~~(A)(C)~~ of this section at the time the lease or rental is consummated.

(ii) For a lease or rental that is taxed pursuant to division (A)(3) of

section 5739.02 of the Revised Code, the initial lease or rental installment shall be sourced pursuant to division ~~(A)~~(C) of this section. Each subsequent installment shall be sourced to the primary property location for the period covered by the installment.

(3) As used in division ~~(G)~~(I) of this section, "primary property location" means an address for tangible personal property provided by the lessee or renter that is available to the lessor or owner from its records maintained in the ordinary course of business, when use of that address does not constitute bad faith.

Sec. 5739.034. (A) As used in this section:

(1) "Air-to-ground radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(3) "Customer" means the person or entity that contracts with a seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or of mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(4) "End user" means the person who utilizes the telecommunications service. In the case of a person other than an individual, "end user" means the individual who utilizes the service on behalf of the person.

(5) "Home service provider" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C. 124(5), as amended.

(6) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(7) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is

not associated with the origination or termination of the telecommunications service. "Post-paid calling service" includes a telecommunications service that would be a prepaid calling service, but for the fact that it is not exclusively a telecommunications service.

(8) "Prepaid calling service" means the right to access exclusively a telecommunications service that must be paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(9) "Service address" means:

(a) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(b) If the location in division (A)(9)(a) of this section is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) If the locations in divisions (A)(9)(a) and (b) of this section are not known, "service address" means the location of the customer's place of primary use.

(B) The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code on sales of telecommunications service, information service, or mobile telecommunications service, is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section.

(C) Except for the telecommunications services described in division (E) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or each level of taxing jurisdiction where the call either originates or terminates and in which the service address also is located.

(D) Except for the telecommunications services described in division (E) of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis shall be sourced to the customer's place of primary use.

(E) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction, as follows:

(1) A sale of mobile telecommunications service, other than air-to-ground radiotelephone service and prepaid calling service, shall be sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by the service provider's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of mobile telecommunications service that is a prepaid telecommunications service shall be sourced under division ~~(A)(C)~~ of section 5739.033 of the Revised Code, but in or, if permitted by division (B) of that section, shall be situated under section 5739.035 of the Revised Code. In lieu of sourcing the sale of the that service under division ~~(A)(C)(5)~~ of that section 5739.033 of the Revised Code, it may be sourced to the location associated with the mobile telephone number.

Sec. 5739.035. This section only applies to sales that are required to be situated under this section pursuant to division (A) or (B) of section 5739.033 of the Revised Code.

(A) Except as otherwise provided in this section, the situs of all sales is the vendor's place of business.

(1) If the consumer or the consumer's agent takes possession of the tangible personal property at a place of business of the vendor where the purchase contract or agreement was made, the situs of the sale is that place of business.

(2) If the consumer or the consumer's agent takes possession of the tangible personal property other than at a place of business of the vendor, or takes possession at a warehouse or similar facility of the vendor, the situs of the sale is the vendor's place of business where the purchase contract or agreement was made or the purchase order was received.

(3) If the vendor provides a service specified in division (B)(3)(a), (b), (c), (d), (n), (o), (r), (s), or (t) of section 5739.01 or makes a sale specified in division (B)(8) of section 5739.01 of the Revised Code, the situs of the sale is the vendor's place of business where the service is performed or the contract or agreement for the service was made or the purchase order was received.

(B) If the vendor is a transient vendor as specified in division (B) of section 5739.17 of the Revised Code, the situs of the sale is the vendor's temporary place of business or, if the transient vendor is the lessor of titled motor vehicles, titled watercraft, or titled outboard motors, at the location

where the lessee keeps the leased property.

(C) If the vendor makes sales of tangible personal property from a stock of goods carried in a motor vehicle, from which the purchaser makes selection and takes possession, or from which the vendor sells tangible personal property the quantity of which has not been determined prior to the time the purchaser takes possession, the situs of the sale is the location of the motor vehicle when the sale is made.

(D) If the vendor is a delivery vendor as specified in division (D) of section 5739.17 of the Revised Code, the situs of the sale is the place where the tangible personal property is delivered, where the leased property is used, or where the service is performed or received.

(E) If the vendor provides a service specified in division (B)(3)(e), (g), (h), (j), (k), (l), (m), (q), or (u) of section 5739.01 of the Revised Code, the situs of the sale is the location of the consumer where the service is performed or received.

(F) If the vendor provides lodging to transient guests as specified in division (B)(2) of section 5739.01 of the Revised Code, the situs of the sale is the location where the lodging is located.

(G) If the vendor sells a warranty, maintenance or service contract, or similar agreement as specified in division (B)(7) of section 5739.01 of the Revised Code and the vendor is a delivery vendor, the situs of the sale is the location of the consumer. If the vendor is not a delivery vendor, the situs of the sale is the vendor's place of business where the contract or agreement was made, unless the warranty or contract is a component of the sale of a titled motor vehicle, titled watercraft, or titled outboard motor, in which case the situs of the sale is the county of titling.

(H) Except as otherwise provided in this division, if the vendor sells a prepaid authorization number or a prepaid telephone calling card, the situs of the sale is the vendor's place of business and shall be taxed at the time of sale. If the vendor sells a prepaid authorization number or prepaid telephone calling card through a telephone call, electronic commerce, or any other form of remote commerce, the situs of the sale is the consumer's shipping address, or, if there is no item shipped, at the consumer's billing address.

Sec. 5739.123. (A) As used in this section, "destination-based sourcing requirements" means the manner in which sales are required to be sourced under divisions (C) to (I) of section 5739.033 of the Revised Code.

(B) A vendor who holds a license issued prior to ~~July~~ May 1, ~~2005~~ 2006, under division (A) of section 5739.17 of the Revised Code may apply for temporary compensation to assist the vendor in complying with the destination-based sourcing requirements for the first six months those

sourcing requirements become applicable to the vendor under section 5739.033 of the Revised Code. The vendor shall file the application in accordance with division (C) of this section. The compensation shall be ~~calculated for each~~ the actual amount of tax collected per county for each month of the six-month period, and shall equal the amount of the tax reported on the return ~~not to exceed twenty-five dollars per county per month.~~ not to exceed twenty-five dollars per county per month. for sales of tangible personal property delivered to each county in which the vendor does not have a fixed place of business and does not, or is not required to, hold a license issued under division (A) of section 5739.17 of the Revised Code for that business, ~~not to exceed twenty-five dollars per county for each month.~~ Only amounts paid by the vendor for which the vendor is eligible for a discount under division (B) of section 5739.12 of the Revised Code and that are shown on returns filed during that six-month period shall be considered in calculating the compensation. In no event shall a vendor receive compensation that exceeds its total cost of complying with the destination-based sourcing requirements. For purposes of the six-month compensation period, a partial month shall be considered a month.

(C) A vendor that applies for compensation under this section shall file an application with the tax commissioner on a form prescribed by the commissioner. The application shall be filed within sixty days after the end of the reporting period that includes the last day of the last month of the six-month period for which the vendor is requesting compensation. The commissioner shall determine the amount of compensation to which the vendor is entitled, and if that amount is equal to or greater than the amount claimed on the application, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the general revenue fund. If the commissioner determines that the amount of compensation to which the vendor is entitled is less than the amount claimed on the vendor's application, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(D) The compensation provided under this section shall not reduce the amount required to be returned to counties and transit authorities under section 5739.21 of the Revised Code.

Sec. 5739.24. (A) As used in this section:

(1) "Destination-based sourcing requirements" has the same meaning as in section 5739.123 of the Revised Code.

(2) "Impacted county" means a county having a population of less than seventy-five thousand as of the decennial census of 2000 taken by the United States census bureau.

(3) "Master account holder" means a person that holds more than one

vendor's license under division (A) of section 5739.17 of the Revised Code, operates in multiple tax jurisdictions under the same ownership, and files or is required to file a consolidated return under section 5739.12 of the Revised Code.

(4) "Tax jurisdiction" means a county or, if applicable, the portion of a county in which a transit authority has territory.

(B)(1) ~~Within~~ Beginning in 2006, within thirty days after the thirtieth day of June and the thirty-first day of December of each year, a master account holder that makes a sale that is subject to the destination-based sourcing requirements shall file with the tax commissioner a report that details the total taxable sales it made for the prior six-month period in each tax jurisdiction and at each fixed place of business for which the master account holder holds or should hold a license, irrespective of where those sales were sourced under those requirements. The commissioner may extend the time for filing the report under this section.

(2) If the report required by division (B)(1) of this section is not timely filed by a master account holder, the tax commissioner shall mail notice of a delinquent report to the holder. In addition to any other penalties or additional charges imposed under this chapter, the commissioner may impose a penalty of up to fifty dollars for each fixed place of business of the master account holder. If the report is filed within fifteen days after the commissioner mails the delinquency notice, the penalty may be remitted in full or in part by the commissioner. But if the master account holder fails to file the report within fifteen days after the commissioner mails the notice, the commissioner shall impose a penalty of up to one hundred dollars for each fixed place of business of the master account holder. This penalty may not be remitted in full by the commissioner. A penalty imposed under this division is subject to collection and assessment in the same manner as any tax levied under this chapter.

(C)(1) ~~Within~~ Beginning in 2006, within seventy-five days after the ~~thirtieth~~ thirty-first day of ~~June~~ July each year and the thirty-first day of ~~December~~ January of ~~each~~ the following year, the tax commissioner shall determine for each county both of the following:

(a) The amount of taxes ~~paid~~ reported on returns filed by all vendors licensed under division (A) of section 5739.17 of the Revised Code that were levied by sections 5739.021 and 5739.026 of the Revised Code and were ~~collected by the county~~ reported as due in accordance with the destination-based sourcing requirements;

(b) The amount of taxes levied by those sections that would have been paid to the county by vendors licensed under division (A) of section 5739.17

of the Revised Code if the taxes had been collected ~~by the county~~ in accordance with section 5739.035 of the Revised Code.

The commissioner may make any adjustments that are necessary to account for delinquent tax returns or reports.

(2) In making the determination required by division (C)(1) of this section, the commissioner shall use the lesser of the county's tax rate in effect as of January 1, ~~2005~~ 2006, or the actual tax rate in effect for the six-month period for which the compensation was calculated.

(3) The commissioner also shall calculate the percentage difference between the amounts determined under divisions (C)(1)(a) and (b) of this section by using a fraction, with the amount determined under division (C)(1)(a) of this section in the numerator, and the amount determined under division (C)(1)(b) of this section in the denominator.

(D)(1) If the percentage difference calculated under division (C)(3) of this section for a county is ninety-six per cent or less, and the county is an impacted county under this section, the county shall receive compensation. ~~Within~~ Beginning in 2006, within ninety days after the ~~thirtieth~~ thirty-first day of ~~June~~ July each year and the thirty-first day of ~~December~~ January of ~~each~~ the following year, the tax commissioner, in the next ensuing payment to be made under division (B)(1) of section 5739.21 of the Revised Code, shall in addition provide from the general revenue fund to such county compensation in the amount of ninety-eight per cent of the denominator calculated under division (C)(3) of this section, minus the numerator calculated under division (C)(3) of this section.

(2) A county that is entitled to compensation under division (D)(1) of this section may request an advance payment of that compensation. The commissioner shall adopt rules that establish the manner by which such county may make the request and the method the commissioner will use to determine the amount of the advance payment to be made to the county. Compensation provided under division (D)(1) of this section shall be adjusted accordingly to account for advance payments made under division (D)(2) of this section.

(E) If, under division (C)(1) of this section, the tax commissioner determines that a county ~~collected~~ received more taxes under the destination-based sourcing requirements than it would have ~~collected~~ received if taxes had been paid in accordance with section 5739.035 of the Revised Code, the county is a windfall county under this division. ~~Within~~ Beginning in 2006, within ninety days after the ~~thirtieth~~ thirty-first day of ~~June~~ July each year and the thirty-first day of ~~December~~ January of ~~each~~ the following year, the commissioner, in the next ensuing payment to be made

under division (B)(1) of section 5739.21 of the Revised Code, shall reduce the amount to be returned to each windfall county by the total amount of excess taxes that would have been received by all windfall counties in proportion to the total amount needed to compensate counties under division (D) of this section.

(F) The commissioner shall make available to the public the determinations made under division (C) of this section, but any data obtained from taxpayers under this section or that would identify those taxpayers shall remain confidential.

(G) There is hereby created the county compensation tax study committee. The committee shall consist of the following seven members: the tax commissioner, three members of the senate appointed by the president of the senate, and three members of the house of representatives appointed by the speaker of the house of representatives. The appointments shall be made not later than January 31, 2006. The tax commissioner shall be the chairperson of the committee and the department of taxation shall provide any information and assistance that is required by the committee to carry out its duties. The committee shall study the extent to which each county has been impacted by the destination-based sourcing requirements. Not later than June 30, 2006, the committee shall issue a report of its findings and shall make recommendations to the president of the senate and the speaker of the house of representatives, at which time the committee shall cease to exist.

Sec. 5740.02. (A)(1) The state of Ohio shall participate in discussions with other states regarding the development of a streamlined sales and use tax system to reduce the burden and cost for all sellers to collect this state's sales and use taxes.

(2) Subject to division (B) of this section, the state also shall participate in meetings of the implementing states or the governing board of the agreement to review ~~or~~, amend, or administer the terms of the agreement to simplify and modernize sales and use tax administration that embodies the requirements set forth in section 5740.05 of the Revised Code. For purposes of these meetings, the state shall be represented by three delegates. The tax commissioner or the commissioner's designee shall be the chairperson of the delegation. The other delegates shall be one delegate chosen by the speaker of the house of representatives and one delegate chosen by the president of the senate. In all matters where voting by the member states or the governing board is required to amend the agreement, the chairperson, based on the votes of the majority of the delegation, shall cast this state's vote.

(B) The state shall not participate in the meetings of the implementing

states or the governing board referred to in division (A)(2) of this section unless the meetings are conducted in accordance with requirements substantially similar to those described in divisions (C) and (F) of section 121.22 of the Revised Code, as if the participants of the meetings were a public body as defined in that section, except such meetings may be closed during any discussion pertaining to proprietary information of a person if the person so requests, personnel matters, competitive bidding, certification of service providers, or matters substantially similar to those described in divisions (G)(2), (3), or (5) of section 121.22 of the Revised Code. The state may participate in teleconferences, special meetings, meetings of working groups, committees, or steering committees if they are conducted in accordance with the public participation rules applicable to such meetings, as established by the implementing states entitled to participate in discussions to finalize the agreement, or the governing board.

(C) As used in this section, ~~"meetings:~~

(1) "Meetings of the implementing states" means meetings of the entire body of the states that are entitled to participate in discussions to finalize the agreement because they have enacted legislation based on the uniform sales and use tax administration act, approved January 24, 2001, or the simplified sales and use tax administration act, approved January 27, 2001.

(2) "Governing board" means the board that, under the terms of the agreement, is responsible for the administration and operation of the agreement.

SECTION 2. That existing sections 5739.01, 5739.031, 5739.033, 5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 and section 5740.10 of the Revised Code are hereby repealed.

SECTION 3. (A)(1) Sections 5739.01, 5739.031, 5739.033, 5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 of the Revised Code, as amended by this act, provide for or are essential to the implementation of a tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, those sections as amended by this act are not subject to the referendum and go into immediate effect when this act becomes law.

(2) The repeal by this act of section 5740.10 of the Revised Code provides for or is essential to the implementation of a tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, the repeal is not subject to the referendum and goes into immediate effect when this act becomes law.

(B) This section provides for or is essential to the implementation of a

tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, this section is not subject to the referendum and goes into immediate effect when this act becomes law.

SECTION 4. Section 5739.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. S.B. 37 of the 125th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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 _____