

As Passed by the House

126th General Assembly

Regular Session

2005-2006

Am. Sub. S. B. No. 26

**Senators Amstutz, Austria, Clancy, Carey, Coughlin, Gardner, Goodman,
Harris, Hottinger, Jacobson, Mumper, Padgett, Schuring, Spada, Wachtmann,**

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Willamowski

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A B I L L

To amend sections 5739.01, 5739.031, 5739.033, 1
5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 2
and to repeal section 5740.10 of the Revised Code 3
to phase in destination-based sourcing of sales 4
for small businesses, by January 1, 2008. 5

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

Section 1. That sections 5739.01, 5739.031, 5739.033, 6
5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 of the Revised 7
Code be amended to read as follows: 8

Sec. 5739.01. As used in this chapter: 9

(A) "Person" includes individuals, receivers, assignees, 10

trustees in bankruptcy, estates, firms, partnerships, 11
associations, joint-stock companies, joint ventures, clubs, 12
societies, corporations, the state and its political subdivisions, 13
and combinations of individuals of any form. 14

(B) "Sale" and "selling" include all of the following 15
transactions for a consideration in any manner, whether absolutely 16
or conditionally, whether for a price or rental, in money or by 17
exchange, and by any means whatsoever: 18

(1) All transactions by which title or possession, or both, 19
of tangible personal property, is or is to be transferred, or a 20
license to use or consume tangible personal property is or is to 21
be granted; 22

(2) All transactions by which lodging by a hotel is or is to 23
be furnished to transient guests; 24

(3) All transactions by which: 25

(a) An item of tangible personal property is or is to be 26
repaired, except property, the purchase of which would not be 27
subject to the tax imposed by section 5739.02 of the Revised Code; 28

(b) An item of tangible personal property is or is to be 29
installed, except property, the purchase of which would not be 30
subject to the tax imposed by section 5739.02 of the Revised Code 31
or property that is or is to be incorporated into and will become 32
a part of a production, transmission, transportation, or 33
distribution system for the delivery of a public utility service; 34

(c) The service of washing, cleaning, waxing, polishing, or 35
painting a motor vehicle is or is to be furnished; 36

(d) Until August 1, 2003, industrial laundry cleaning 37
services are or are to be provided and, on and after August 1, 38
2003, laundry and dry cleaning services are or are to be provided; 39

(e) Automatic data processing, computer services, or 40

electronic information services are or are to be provided for use 41
in business when the true object of the transaction is the receipt 42
by the consumer of automatic data processing, computer services, 43
or electronic information services rather than the receipt of 44
personal or professional services to which automatic data 45
processing, computer services, or electronic information services 46
are incidental or supplemental. Notwithstanding any other 47
provision of this chapter, such transactions that occur between 48
members of an affiliated group are not sales. An affiliated group 49
means two or more persons related in such a way that one person 50
owns or controls the business operation of another member of the 51
group. In the case of corporations with stock, one corporation 52
owns or controls another if it owns more than fifty per cent of 53
the other corporation's common stock with voting rights. 54

(f) Telecommunications service, other than mobile 55
telecommunications service after July 31, 2002, is or is to be 56
provided, but does not include transactions by which local 57
telecommunications service is obtained from a coin-operated 58
telephone and paid for by using coin; 59

(g) Landscaping and lawn care service is or is to be 60
provided; 61

(h) Private investigation and security service is or is to be 62
provided; 63

(i) Information services or tangible personal property is 64
provided or ordered by means of a nine hundred telephone call; 65

(j) Building maintenance and janitorial service is or is to 66
be provided; 67

(k) Employment service is or is to be provided; 68

(l) Employment placement service is or is to be provided; 69

(m) Exterminating service is or is to be provided; 70

(n) Physical fitness facility service is or is to be provided;	71 72
(o) Recreation and sports club service is or is to be provided.	73 74
(p) After July 31, 2002, mobile telecommunications service is or is to be provided when that service is sitused 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.	75 76 77 78 79
(q) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	80 81
(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.	82 83 84 85 86 87 88 89
(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;	90 91 92 93 94 95 96 97
(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.	98 99 100 101

(u) On and after August 1, 2003, snow removal service is or 102
is to be provided. As used in this division, "snow removal 103
service" means the removal of snow by any mechanized means, but 104
does not include the providing of such service by a person that 105
has less than five thousand dollars in sales of such service 106
during the calendar year. 107

(4) All transactions by which printed, imprinted, 108
overprinted, lithographic, multilithic, blueprinted, photostatic, 109
or other productions or reproductions of written or graphic matter 110
are or are to be furnished or transferred; 111

(5) The production or fabrication of tangible personal 112
property for a consideration for consumers who furnish either 113
directly or indirectly the materials used in the production of 114
fabrication work; and include the furnishing, preparing, or 115
serving for a consideration of any tangible personal property 116
consumed on the premises of the person furnishing, preparing, or 117
serving such tangible personal property. Except as provided in 118
section 5739.03 of the Revised Code, a construction contract 119
pursuant to which tangible personal property is or is to be 120
incorporated into a structure or improvement on and becoming a 121
part of real property is not a sale of such tangible personal 122
property. The construction contractor is the consumer of such 123
tangible personal property, provided that the sale and 124
installation of carpeting, the sale and installation of 125
agricultural land tile, the sale and erection or installation of 126
portable grain bins, or the provision of landscaping and lawn care 127
service and the transfer of property as part of such service is 128
never a construction contract. 129

As used in division (B)(5) of this section: 130

(a) "Agricultural land tile" means fired clay or concrete 131
tile, or flexible or rigid perforated plastic pipe or tubing, 132

incorporated or to be incorporated into a subsurface drainage 133
system appurtenant to land used or to be used directly in 134
production by farming, agriculture, horticulture, or floriculture. 135
The term does not include such materials when they are or are to 136
be incorporated into a drainage system appurtenant to a building 137
or structure even if the building or structure is used or to be 138
used in such production. 139

(b) "Portable grain bin" means a structure that is used or to 140
be used by a person engaged in farming or agriculture to shelter 141
the person's grain and that is designed to be disassembled without 142
significant damage to its component parts. 143

(6) All transactions in which all of the shares of stock of a 144
closely held corporation are transferred, if the corporation is 145
not engaging in business and its entire assets consist of boats, 146
planes, motor vehicles, or other tangible personal property 147
operated primarily for the use and enjoyment of the shareholders; 148

(7) All transactions in which a warranty, maintenance or 149
service contract, or similar agreement by which the vendor of the 150
warranty, contract, or agreement agrees to repair or maintain the 151
tangible personal property of the consumer is or is to be 152
provided; 153

(8) ~~;(9)~~ The transfer of copyrighted motion picture films 154
used solely for advertising purposes, except that the transfer of 155
such films for exhibition purposes is not a sale. 156

(9) On and after August 1, 2003, all transactions by which 157
tangible personal property is or is to be stored, except such 158
property that the consumer of the storage holds for sale in the 159
regular course of business. 160

Except ~~other than~~ as provided in this section, "sale" and 161
"selling" do not include transfers of interest in leased property 162
where the original lessee and the terms of the original lease 163

agreement remain unchanged, or professional, insurance, or 164
personal service transactions that involve the transfer of 165
tangible personal property as an inconsequential element, for 166
which no separate charges are made. 167

(C) "Vendor" means the person providing the service or by 168
whom the transfer effected or license given by a sale is or is to 169
be made or given and, for sales described in division (B)(3)(i) of 170
this section, the telecommunications service vendor that provides 171
the nine hundred telephone service; if two or more persons are 172
engaged in business at the same place of business under a single 173
trade name in which all collections on account of sales by each 174
are made, such persons shall constitute a single vendor. 175

Physicians, dentists, hospitals, and veterinarians who are 176
engaged in selling tangible personal property as received from 177
others, such as eyeglasses, mouthwashes, dentifrices, or similar 178
articles, are vendors. Veterinarians who are engaged in 179
transferring to others for a consideration drugs, the dispensing 180
of which does not require an order of a licensed veterinarian or 181
physician under federal law, are vendors. 182

(D)(1) "Consumer" means the person for whom the service is 183
provided, to whom the transfer effected or license given by a sale 184
is or is to be made or given, to whom the service described in 185
division (B)(3)(f) or (i) of this section is charged, or to whom 186
the admission is granted. 187

(2) Physicians, dentists, hospitals, and blood banks operated 188
by nonprofit institutions and persons licensed to practice 189
veterinary medicine, surgery, and dentistry are consumers of all 190
tangible personal property and services purchased by them in 191
connection with the practice of medicine, dentistry, the rendition 192
of hospital or blood bank service, or the practice of veterinary 193
medicine, surgery, and dentistry. In addition to being consumers 194
of drugs administered by them or by their assistants according to 195

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. 227

(5) A person who makes sales of any of the services listed in 228
division (B)(3) of this section is the consumer of any tangible 229
personal property used in performing the service. The purchase of 230
that property is not subject to the resale exception under 231
division (E)(1) of this section. 232

(6) A person who engages in highway transportation for hire 233
is the consumer of all packaging materials purchased by that 234
person and used in performing the service, except for packaging 235
materials sold by such person in a transaction separate from the 236
service. 237

(E) "Retail sale" and "sales at retail" include all sales, 238
except those in which the purpose of the consumer is to resell the 239
thing transferred or benefit of the service provided, by a person 240
engaging in business, in the form in which the same is, or is to 241
be, received by the person. 242

(F) "Business" includes any activity engaged in by any person 243
with the object of gain, benefit, or advantage, either direct or 244
indirect. "Business" does not include the activity of a person in 245
managing and investing the person's own funds. 246

(G) "Engaging in business" means commencing, conducting, or 247
continuing in business, and liquidating a business when the 248
liquidator thereof holds itself out to the public as conducting 249
such business. Making a casual sale is not engaging in business. 250

(H)(1)(a) "Price," except as provided in divisions (H)(2) and 251
(3) of this section, means the total amount of consideration, 252
including cash, credit, property, and services, for which tangible 253
personal property or services are sold, leased, or rented, valued 254
in money, whether received in money or otherwise, without any 255
deduction for any of the following: 256

(i) The vendor's cost of the property sold;	257
(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;	258 259 260
(iii) Charges by the vendor for any services necessary to complete the sale;	261 262
(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.	263 264 265 266 267
(v) Installation charges;	268
(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.	269 270 271 272
(b) "Price" does not include any of the following:	273
(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;	274 275 276
(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;	277 278 279 280
(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.	281 282 283
(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	284 285 286

part of the consideration received, "price" has the same meaning 287
as in division (H)(1) of this section, reduced by the credit 288
afforded the consumer by the dealer for the motor vehicle received 289
in trade. 290

(3) In the case of a sale of any watercraft or outboard motor 291
by a watercraft dealer licensed in accordance with section 292
1547.543 of the Revised Code, in which another watercraft, 293
watercraft and trailer, or outboard motor is accepted by the 294
dealer as part of the consideration received, "price" has the same 295
meaning as in division (H)(1) of this section, reduced by the 296
credit afforded the consumer by the dealer for the watercraft, 297
watercraft and trailer, or outboard motor received in trade. As 298
used in this division, "watercraft" includes an outdrive unit 299
attached to the watercraft. 300

(4) In the case of a transaction in which telecommunications 301
service, mobile telecommunications service, or cable television 302
service is sold in a bundled transaction with other distinct 303
services for a single price that is not itemized, the entire price 304
is subject to the taxes levied under sections 5739.02, 5739.021, 305
5739.023, and 5739.026 of the Revised Code, unless the vendor can 306
reasonably identify the nontaxable portion from its books and 307
records kept in the regular course of business. Upon the request 308
of the consumer, the vendor shall disclose to the consumer the 309
selling price for the taxable services included in the selling 310
price for the taxable and nontaxable services billed on an 311
aggregated basis. The burden of proving any nontaxable charges is 312
on the vendor. 313

(I) "Receipts" means the total amount of the prices of the 314
sales of vendors, provided that cash discounts allowed and taken 315
on sales at the time they are consummated are not included, minus 316
any amount deducted as a bad debt pursuant to section 5739.121 of 317
the Revised Code. "Receipts" does not include the sale price of 318

property returned or services rejected by consumers when the full 319
sale price and tax are refunded either in cash or by credit. 320

(J) "Place of business" means any location at which a person 321
engages in business. 322

(K) "Premises" includes any real property or portion thereof 323
upon which any person engages in selling tangible personal 324
property at retail or making retail sales and also includes any 325
real property or portion thereof designated for, or devoted to, 326
use in conjunction with the business engaged in by such person. 327

(L) "Casual sale" means a sale of an item of tangible 328
personal property that was obtained by the person making the sale, 329
through purchase or otherwise, for the person's own use and was 330
previously subject to any state's taxing jurisdiction on its sale 331
or use, and includes such items acquired for the seller's use that 332
are sold by an auctioneer employed directly by the person for such 333
purpose, provided the location of such sales is not the 334
auctioneer's permanent place of business. As used in this 335
division, "permanent place of business" includes any location 336
where such auctioneer has conducted more than two auctions during 337
the year. 338

(M) "Hotel" means every establishment kept, used, maintained, 339
advertised, or held out to the public to be a place where sleeping 340
accommodations are offered to guests, in which five or more rooms 341
are used for the accommodation of such guests, whether the rooms 342
are in one or several structures. 343

(N) "Transient guests" means persons occupying a room or 344
rooms for sleeping accommodations for less than thirty consecutive 345
days. 346

(O) "Making retail sales" means the effecting of transactions 347
wherein one party is obligated to pay the price and the other 348
party is obligated to provide a service or to transfer title to or 349

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 381
such materials or parts to the manufacturing process. 382
"Manufacturing operation" does not include packaging. 383

(T) "Fiscal officer" means, with respect to a regional 384
transit authority, the secretary-treasurer thereof, and with 385
respect to a county that is a transit authority, the fiscal 386
officer of the county transit board if one is appointed pursuant 387
to section 306.03 of the Revised Code or the county auditor if the 388
board of county commissioners operates the county transit system. 389

(U) "Transit authority" means a regional transit authority 390
created pursuant to section 306.31 of the Revised Code or a county 391
in which a county transit system is created pursuant to section 392
306.01 of the Revised Code. For the purposes of this chapter, a 393
transit authority must extend to at least the entire area of a 394
single county. A transit authority that includes territory in more 395
than one county must include all the area of the most populous 396
county that is a part of such transit authority. County population 397
shall be measured by the most recent census taken by the United 398
States census bureau. 399

(V) "Legislative authority" means, with respect to a regional 400
transit authority, the board of trustees thereof, and with respect 401
to a county that is a transit authority, the board of county 402
commissioners. 403

(W) "Territory of the transit authority" means all of the 404
area included within the territorial boundaries of a transit 405
authority as they from time to time exist. Such territorial 406
boundaries must at all times include all the area of a single 407
county or all the area of the most populous county that is a part 408
of such transit authority. County population shall be measured by 409
the most recent census taken by the United States census bureau. 410

(X) "Providing a service" means providing or furnishing 411

anything described in division (B)(3) of this section for 412
consideration. 413

(Y)(1)(a) "Automatic data processing" means processing of 414
others' data, including keypunching or similar data entry services 415
together with verification thereof, or providing access to 416
computer equipment for the purpose of processing data. 417

(b) "Computer services" means providing services consisting 418
of specifying computer hardware configurations and evaluating 419
technical processing characteristics, computer programming, and 420
training of computer programmers and operators, provided in 421
conjunction with and to support the sale, lease, or operation of 422
taxable computer equipment or systems. 423

(c) "Electronic information services" means providing access 424
to computer equipment by means of telecommunications equipment for 425
the purpose of either of the following: 426

(i) Examining or acquiring data stored in or accessible to 427
the computer equipment; 428

(ii) Placing data into the computer equipment to be retrieved 429
by designated recipients with access to the computer equipment. 430

(d) "Automatic data processing, computer services, or 431
electronic information services" shall not include personal or 432
professional services. 433

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 434
section, "personal and professional services" means all services 435
other than automatic data processing, computer services, or 436
electronic information services, including but not limited to: 437

(a) Accounting and legal services such as advice on tax 438
matters, asset management, budgetary matters, quality control, 439
information security, and auditing and any other situation where 440
the service provider receives data or information and studies, 441

alters, analyzes, interprets, or adjusts such material;	442
(b) Analyzing business policies and procedures;	443
(c) Identifying management information needs;	444
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	445 446 447
(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;	448 449 450 451
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	452 453 454
(g) Testing of business procedures;	455
(h) Training personnel in business procedure applications;	456
(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;	457 458 459 460 461 462
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	463 464
The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.	465 466
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	467 468 469
(1) The holder of a permit or certificate issued by this	470

state or the United States authorizing the holder to engage in 471
transportation of personal property belonging to others for 472
consideration over or on highways, roadways, streets, or any 473
similar public thoroughfare; 474

(2) A person who engages in the transportation of personal 475
property belonging to others for consideration over or on 476
highways, roadways, streets, or any similar public thoroughfare 477
but who could not have engaged in such transportation on December 478
11, 1985, unless the person was the holder of a permit or 479
certificate of the types described in division (Z)(1) of this 480
section; 481

(3) A person who leases a motor vehicle to and operates it 482
for a person described by division (Z)(1) or (2) of this section. 483

(AA) "Telecommunications service" means the transmission of 484
any interactive, two-way electromagnetic communications, including 485
voice, image, data, and information, through the use of any medium 486
such as wires, cables, microwaves, cellular radio, radio waves, 487
light waves, or any combination of those or similar media. 488
"Telecommunications service" includes message toll service even 489
though the vendor provides the message toll service by means of 490
wide area transmission type service or private communications 491
service purchased from another telecommunications service 492
provider, and other related fees and ancillary services, including 493
universal service fees, detailed billing service, directory 494
assistance, service initiation, voice mail service, and vertical 495
services, such as caller ID and three-way calling. 496
"Telecommunications service" does not include any of the 497
following: 498

(1) Sales of telecommunications service billed to persons 499
before January 1, 2004, by telephone companies subject to the 500
excise tax imposed by Chapter 5727. of the Revised Code; 501

(2) Sales of telecommunications service to a provider of 502
telecommunications service or of mobile telecommunications 503
service, including access services, for use in providing 504
telecommunications service or mobile telecommunications service; 505

(3) Value-added nonvoice services in which computer 506
processing applications are used to act on the form, content, 507
code, or protocol of the information to be transmitted; 508

(4) Transmission of interactive video programming by a cable 509
television system as defined in section 505.90 of the Revised 510
Code; 511

(5) After July 31, 2002, mobile telecommunications service. 512

(BB) "Laundry and dry cleaning services" means removing soil 513
or dirt from towels, linens, articles of clothing, or other fabric 514
items that belong to others and supplying towels, linens, articles 515
of clothing, or other fabric items. "Laundry and dry cleaning 516
services" does not include the provision of self-service 517
facilities for use by consumers to remove soil or dirt from 518
towels, linens, articles of clothing, or other fabric items. 519

(CC) "Magazines distributed as controlled circulation 520
publications" means magazines containing at least twenty-four 521
pages, at least twenty-five per cent editorial content, issued at 522
regular intervals four or more times a year, and circulated 523
without charge to the recipient, provided that such magazines are 524
not owned or controlled by individuals or business concerns which 525
conduct such publications as an auxiliary to, and essentially for 526
the advancement of the main business or calling of, those who own 527
or control them. 528

(DD) "Landscaping and lawn care service" means the services 529
of planting, seeding, sodding, removing, cutting, trimming, 530
pruning, mulching, aerating, applying chemicals, watering, 531
fertilizing, and providing similar services to establish, promote, 532

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 565
capitalized tangible personal property, and leased personal 566
property that would be capitalized if purchased, used by a person 567
primarily to perform research and development. Tangible personal 568
property primarily used in testing, as defined in division (A)(4) 569
of section 5739.011 of the Revised Code, or used for recording or 570
storing test results, is not qualified research and development 571
equipment unless such property is primarily used by the consumer 572
in testing the product, equipment, or manufacturing process being 573
created, designed, or formulated by the consumer in the research 574
and development activity or in recording or storing such test 575
results. 576

(II) "Building maintenance and janitorial service" means 577
cleaning the interior or exterior of a building and any tangible 578
personal property located therein or thereon, including any 579
services incidental to such cleaning for which no separate charge 580
is made. However, "building maintenance and janitorial service" 581
does not include the providing of such service by a person who has 582
less than five thousand dollars in sales of such service during 583
the calendar year. 584

(JJ) "Employment service" means providing or supplying 585
personnel, on a temporary or long-term basis, to perform work or 586
labor under the supervision or control of another, when the 587
personnel so supplied receive their wages, salary, or other 588
compensation from the provider of the service. "Employment 589
service" does not include: 590

(1) Acting as a contractor or subcontractor, where the 591
personnel performing the work are not under the direct control of 592
the purchaser. 593

(2) Medical and health care services. 594

(3) Supplying personnel to a purchaser pursuant to a contract 595

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 627
or food production, and includes but is not limited to cattle, 628
sheep, goats, swine, and poultry. "Livestock" does not include 629
invertebrates, fish, amphibians, reptiles, horses, domestic pets, 630
animals for use in laboratories or for exhibition, or other 631
animals not commonly raised for food or food production. 632

(PP) "Livestock structure" means a building or structure used 633
exclusively for the housing, raising, feeding, or sheltering of 634
livestock, and includes feed storage or handling structures and 635
structures for livestock waste handling. 636

(QQ) "Horticulture" means the growing, cultivation, and 637
production of flowers, fruits, herbs, vegetables, sod, mushrooms, 638
and nursery stock. As used in this division, "nursery stock" has 639
the same meaning as in section 927.51 of the Revised Code. 640

(RR) "Horticulture structure" means a building or structure 641
used exclusively for the commercial growing, raising, or 642
overwintering of horticultural products, and includes the area 643
used for stocking, storing, and packing horticultural products 644
when done in conjunction with the production of those products. 645

(SS) "Newspaper" means an unbound publication bearing a title 646
or name that is regularly published, at least as frequently as 647
biweekly, and distributed from a fixed place of business to the 648
public in a specific geographic area, and that contains a 649
substantial amount of news matter of international, national, or 650
local events of interest to the general public. 651

(TT) "Professional racing team" means a person that employs 652
at least twenty full-time employees for the purpose of conducting 653
a motor vehicle racing business for profit. The person must 654
conduct the business with the purpose of racing one or more motor 655
racing vehicles in at least ten competitive professional racing 656
events each year that comprise all or part of a motor racing 657

series sanctioned by one or more motor racing sanctioning 658
organizations. A "motor racing vehicle" means a vehicle for which 659
the chassis, engine, and parts are designed exclusively for motor 660
racing, and does not include a stock or production model vehicle 661
that may be modified for use in racing. For the purposes of this 662
division: 663

(1) A "competitive professional racing event" is a motor 664
vehicle racing event sanctioned by one or more motor racing 665
sanctioning organizations, at which aggregate cash prizes in 666
excess of eight hundred thousand dollars are awarded to the 667
competitors. 668

(2) "Full-time employee" means an individual who is employed 669
for consideration for thirty-five or more hours a week, or who 670
renders any other standard of service generally accepted by custom 671
or specified by contract as full-time employment. 672

(UU)(1) "Lease" or "rental" means any transfer of the 673
possession or control of tangible personal property for a fixed or 674
indefinite term, for consideration. "Lease" or "rental" includes 675
future options to purchase or extend, and agreements described in 676
26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where 677
the amount of consideration may be increased or decreased by 678
reference to the amount realized upon the sale or disposition of 679
the property. "Lease" or "rental" does not include: 680

(a) A transfer of possession or control of tangible personal 681
property under a security agreement or a deferred payment plan 682
that requires the transfer of title upon completion of the 683
required payments; 684

(b) A transfer of possession or control of tangible personal 685
property under an agreement that requires the transfer of title 686
upon completion of required payments and payment of an option 687
price that does not exceed the greater of one hundred dollars or 688

one per cent of the total required payments;

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(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.

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(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.

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(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.

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(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.

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

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(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

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service charges, and any other charges having any connection with 720
the provision of the satellite broadcasting service. 721

(YY) "Tangible personal property" means personal property 722
that can be seen, weighed, measured, felt, or touched, or that is 723
in any other manner perceptible to the senses. For purposes of 724
this chapter and Chapter 5741. of the Revised Code, "tangible 725
personal property" includes motor vehicles, electricity, water, 726
gas, steam, and prewritten computer software. 727

(ZZ) "Direct mail" means printed material delivered or 728
distributed by United States mail or other delivery service to a 729
mass audience or to addressees on a mailing list provided by the 730
consumer or at the direction of the consumer when the cost of the 731
items are not billed directly to the recipients. "Direct mail" 732
includes tangible personal property supplied directly or 733
indirectly by the consumer to the direct mail vendor for inclusion 734
in the package containing the printed material. "Direct mail" does 735
not include multiple items of printed material delivered to a 736
single address. 737

(AAA) "Computer" means an electronic device that accepts 738
information in digital or similar form and manipulates it for a 739
result based on a sequence of instructions. 740

(BBB) "Computer software" means a set of coded instructions 741
designed to cause a computer or automatic data processing 742
equipment to perform a task. 743

(CCC) "Delivered electronically" means delivery of computer 744
software from the seller to the purchaser by means other than 745
tangible storage media. 746

(DDD) "Prewritten computer software" means computer software, 747
including prewritten upgrades, that is not designed and developed 748
by the author or other creator to the specifications of a specific 749
purchaser. The combining of two or more prewritten computer 750

software programs or prewritten portions thereof does not cause 751
the combination to be other than prewritten computer software. 752
"Prewritten computer software" includes software designed and 753
developed by the author or other creator to the specifications of 754
a specific purchaser when it is sold to a person other than the 755
purchaser. If a person modifies or enhances computer software of 756
which the person is not the author or creator, the person shall be 757
deemed to be the author or creator only of such person's 758
modifications or enhancements. Prewritten computer software or a 759
prewritten portion thereof that is modified or enhanced to any 760
degree, where such modification or enhancement is designed and 761
developed to the specifications of a specific purchaser, remains 762
prewritten computer software; provided, however, that where there 763
is a reasonable, separately stated charge or an invoice or other 764
statement of the price given to the purchaser for the modification 765
or enhancement, the modification or enhancement shall not 766
constitute prewritten computer software. 767

(EEE)(1) Prior to July 1, 2004, "food" means cereals and 768
cereal products, milk and milk products including ice cream, meat 769
and meat products, fish and fish products, eggs and egg products, 770
vegetables and vegetable products, fruits, fruit products, and 771
pure fruit juices, condiments, sugar and sugar products, coffee 772
and coffee substitutes, tea, and cocoa and cocoa products. "Food" 773
does not include spirituous liquors, wine, mixed beverages, or 774
beer; soft drinks; sodas and beverages that are ordinarily 775
dispensed at or in connection with bars and soda fountains, other 776
than coffee, tea, and cocoa; root beer and root beer extracts; 777
malt and malt extracts; mineral oils, cod liver oils, and halibut 778
liver oil; medicines, including tonics, vitamin preparations, and 779
other products sold primarily for their medicinal properties; and 780
water, including mineral, bottled, and carbonated waters, and ice. 781

(2) On and after July 1, 2004, "food" means substances, 782

whether in liquid, concentrated, solid, frozen, dried, or 783
dehydrated form, that are sold for ingestion or chewing by humans 784
and are consumed for their taste or nutritional value. "Food" does 785
not include alcoholic beverages, dietary supplements, soft drinks, 786
or tobacco. 787

(3) As used in division (EEE)(2) of this section: 788

(a) "Alcoholic beverages" means beverages that are suitable 789
for human consumption and contain one-half of one per cent or more 790
of alcohol by volume. 791

(b) "Dietary supplements" means any product, other than 792
tobacco, that is intended to supplement the diet and that is 793
intended for ingestion in tablet, capsule, powder, softgel, 794
gelcap, or liquid form, or, if not intended for ingestion in such 795
a form, is not represented as conventional food for use as a sole 796
item of a meal or of the diet; that is required to be labeled as a 797
dietary supplement, identifiable by the "supplement facts" box 798
found on the label, as required by 21 C.F.R. 101.36; and that 799
contains one or more of the following dietary ingredients: 800

(i) A vitamin; 801

(ii) A mineral; 802

(iii) An herb or other botanical; 803

(iv) An amino acid; 804

(v) A dietary substance for use by humans to supplement the 805
diet by increasing the total dietary intake; 806

(vi) A concentrate, metabolite, constituent, extract, or 807
combination of any ingredient described in divisions 808
(EEE)(3)(b)(i) to (v) of this section. 809

(c) "Soft drinks" means nonalcoholic beverages that contain 810
natural or artificial sweeteners. "Soft drinks" does not include 811
beverages that contain milk or milk products, soy, rice, or 812

similar milk substitutes, or that contains greater than fifty per 813
cent vegetable or fruit juice by volume. 814

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 815
tobacco, or any other item that contains tobacco. 816

(FFF) "Drug" means a compound, substance, or preparation, and 817
any component of a compound, substance, or preparation, other than 818
food, dietary supplements, or alcoholic beverages that is 819
recognized in the official United States pharmacopoeia, official 820
homeopathic pharmacopoeia of the United States, or official 821
national formulary, and supplements to them; is intended for use 822
in the diagnosis, cure, mitigation, treatment, or prevention of 823
disease; or is intended to affect the structure or any function of 824
the body. 825

(GGG) "Prescription" means an order, formula, or recipe 826
issued in any form of oral, written, electronic, or other means of 827
transmission by a duly licensed practitioner authorized by the 828
laws of this state to issue a prescription. 829

(HHH) "Durable medical equipment" means equipment, including 830
repair and replacement parts for such equipment, that can 831
withstand repeated use, is primarily and customarily used to serve 832
a medical purpose, generally is not useful to a person in the 833
absence of illness or injury, and is not worn in or on the body. 834
"Durable medical equipment" does not include mobility enhancing 835
equipment. 836

(III) "Mobility enhancing equipment" means equipment, 837
including repair and replacement parts for such equipment, that is 838
primarily and customarily used to provide or increase the ability 839
to move from one place to another and is appropriate for use 840
either in a home or a motor vehicle, that is not generally used by 841
persons with normal mobility, and that does not include any motor 842
vehicle or equipment on a motor vehicle normally provided by a 843

motor vehicle manufacturer. "Mobility enhancing equipment" does 844
not include durable medical equipment. 845

(JJJ) "Prosthetic device" means a replacement, corrective, or 846
supportive device, including repair and replacement parts for the 847
device, worn on or in the human body to artificially replace a 848
missing portion of the body, prevent or correct physical deformity 849
or malfunction, or support a weak or deformed portion of the body. 850
As used in this division, "prosthetic device" does not include 851
corrective eyeglasses, contact lenses, or dental prosthesis. 852

(KKK)(1) "Fractional aircraft ownership program" means a 853
program in which persons within an affiliated group sell and 854
manage fractional ownership program aircraft, provided that at 855
least one hundred airworthy aircraft are operated in the program 856
and the program meets all of the following criteria: 857

(a) Management services are provided by at least one program 858
manager within an affiliated group on behalf of the fractional 859
owners. 860

(b) Each program aircraft is owned or possessed by at least 861
one fractional owner. 862

(c) Each fractional owner owns or possesses at least a 863
one-sixteenth interest in at least one fixed-wing program 864
aircraft. 865

(d) A dry-lease aircraft interchange arrangement is in effect 866
among all of the fractional owners. 867

(e) Multi-year program agreements are in effect regarding the 868
fractional ownership, management services, and dry-lease aircraft 869
interchange arrangement aspects of the program. 870

(2) As used in division (KKK)(1) of this section: 871

(a) "Affiliated group" has the same meaning as in division 872
(B)(3)(e) of this section. 873

(b) "Fractional owner" means a person that owns or possesses 874
at least a one-sixteenth interest in a program aircraft and has 875
entered into the agreements described in division (KKK)(1)(e) of 876
this section. 877

(c) "Fractional ownership program aircraft" or "program 878
aircraft" means a turbojet aircraft that is owned or possessed by 879
a fractional owner and that has been included in a dry-lease 880
aircraft interchange arrangement and agreement under divisions 881
(KKK)(1)(d) and (e) of this section, or an aircraft a program 882
manager owns or possesses primarily for use in a fractional 883
aircraft ownership program. 884

(d) "Management services" means administrative and aviation 885
support services furnished under a fractional aircraft ownership 886
program in accordance with a management services agreement under 887
division (KKK)(1)(e) of this section, and offered by the program 888
manager to the fractional owners, including, at a minimum, the 889
establishment and implementation of safety guidelines; the 890
coordination of the scheduling of the program aircraft and crews; 891
program aircraft maintenance; program aircraft insurance; crew 892
training for crews employed, furnished, or contracted by the 893
program manager or the fractional owner; the satisfaction of 894
record-keeping requirements; and the development and use of an 895
operations manual and a maintenance manual for the fractional 896
aircraft ownership program. 897

(e) "Program manager" means the person that offers management 898
services to fractional owners pursuant to a management services 899
agreement under division (KKK)(1)(e) of this section. 900

Sec. 5739.031. (A) Upon application, the tax commissioner may 901
issue a direct payment permit that authorizes a consumer to pay 902
the sales tax levied by or pursuant to section 5739.02, 5739.021, 903
5739.023, or 5739.026 of the Revised Code or the use tax levied by 904

or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of 905
the Revised Code directly to the state and waives the collection 906
of the tax by the vendor or seller if payment directly to the 907
state would improve compliance and increase the efficiency of the 908
administration of the tax. The commissioner may adopt rules 909
establishing the criteria for the issuance of such permits. 910

(B) Each permit holder, on or before the twenty-third day of 911
each month, shall make and file with the treasurer of state a 912
return for the preceding month in such form as is prescribed by 913
the tax commissioner and shall pay the tax shown on the return to 914
be due. The return shall show the sum of the prices of taxable 915
merchandise used and taxable services received, the amount of tax 916
due from the permit holder, and such other information as the 917
commissioner deems necessary. The commissioner, upon written 918
request by the permit holder, may extend the time for making and 919
filing returns and paying the tax. If the commissioner determines 920
that a permit holder's tax liability is not such as to merit 921
monthly filing, the commissioner may authorize the permit holder 922
to file returns and pay the tax at less frequent intervals. The 923
treasurer of state shall show on the return the date it was filed 924
and the amount of the payment remitted to the treasurer. 925
Thereafter, the treasurer immediately shall transmit all returns 926
filed under this section to the tax commissioner. 927

Any permit holder required to file a return and pay the tax 928
under this section whose total payment for any calendar year 929
equals or exceeds the amount shown in section 5739.032 of the 930
Revised Code shall make each payment required by this section in 931
the second ensuing and each succeeding year by electronic funds 932
transfer as prescribed by, and on or before the dates specified 933
in, section 5739.032 of the Revised Code, except as otherwise 934
prescribed by that section. 935

(C) For purposes of reporting and remitting the tax, the 936

price of tangible personal property or services purchased by, or 937
of tangible personal property produced by, the permit holder shall 938
be determined under division (G) of section 5741.01 of the Revised 939
Code. Except as otherwise provided in division ~~(C)~~(E) of section 940
5739.033 of the Revised Code, the situs of any purchase 941
transaction made by the permit holder is the location where the 942
tangible personal property or service is received by the permit 943
holder. 944

(D) It shall be the duty of every permit holder required to 945
make a return and pay its tax under this section to keep and 946
preserve suitable records of purchases together with invoices of 947
purchases, bills of lading, asset ledgers, depreciation schedules, 948
transfer journals, and such other primary and secondary records 949
and documents in such form as the commissioner requires. All such 950
records and other documents shall be open during business hours to 951
the inspection of the tax commissioner, and shall be preserved for 952
a period of four years, unless the commissioner, in writing, has 953
authorized their destruction or disposal at an earlier date, or by 954
order or by reason of a waiver of the four-year time limitation 955
pursuant to section 5739.16 of the Revised Code requires that they 956
be kept longer. 957

(E) A permit granted pursuant to this section shall continue 958
to be valid until surrendered by the holder or canceled for cause 959
by the tax commissioner. 960

(F) Persons who hold a direct payment permit that has not 961
been canceled shall not be required to issue exemption 962
certificates and shall not be required to pay the tax as 963
prescribed in sections 5739.03, 5739.033, and 5741.12 of the 964
Revised Code. Such persons shall notify vendors and sellers from 965
whom purchases of tangible personal property or services are made, 966
of their direct payment permit number and that the tax is being 967
paid directly to the state. Upon receipt of such notice, such 968

vendor or seller shall be absolved from all duties and liabilities 969
imposed by section 5739.03 or 5741.04 of the Revised Code with 970
respect to sales of tangible personal property or services to such 971
permit holder. 972

Vendors and sellers who make sales upon which the tax is not 973
collected by reason of the provisions of this section shall 974
maintain records in such manner that the amount involved and 975
identity of the purchaser may be ascertained. The receipts from 976
such sales shall not be subject to the tax levied in section 977
5739.10 of the Revised Code. 978

Upon the cancellation or surrender of a direct payment 979
permit, the provisions of sections 5739.03, 5741.04, and 5741.12 980
of the Revised Code shall immediately apply to all purchases made 981
subsequent to such cancellation or surrender by the person who 982
previously held such permit, and such person shall so notify 983
vendors and sellers from whom purchases of tangible personal 984
property or services are made, in writing, prior to or at the time 985
of the first purchase after such cancellation or surrender. Upon 986
receipt of such notice, the vendor shall be subject to the 987
provisions of sections 5739.03 and 5739.10 of the Revised Code and 988
the seller shall be subject to the provisions of section 5741.04 989
of the Revised Code, with respect to all sales subsequently made 990
to such person. Failure of any such person to notify vendors or 991
sellers from whom purchases of tangible personal property or 992
services are made of the cancellation or surrender of a direct 993
payment permit shall be considered as a refusal to pay the tax by 994
the person required to issue such notice. 995

Sec. 5739.033. This (A) Except as provided in division (B) of 996
this section, divisions (C) to (I) of this section applies apply 997
to sales made on and after ~~July~~ May 1, 2005 2006. Sales made 998
before ~~July~~ May 1, 2005 2006, are subject to section 5739.035 of 999

the Revised Code. On and after January 1, 2005, any vendor may 1000
irrevocably elect to comply with divisions (C) to (I) of this 1001
section for all of the vendor's sales and places of business in 1002
this state. 1003

The amount of tax due pursuant to sections 5739.02, 5739.021, 1004
5739.023, and 5739.026 of the Revised Code is the sum of the taxes 1005
imposed pursuant to those sections at the sourcing location of the 1006
sale as determined under this section or, if applicable, under 1007
division (C) of section 5739.031 or section 5739.034 of the 1008
Revised Code, or at the situs of the sale as determined under 1009
section 5739.035 of the Revised Code. This section applies only to 1010
a vendor's or seller's obligation to collect and remit sales taxes 1011
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the 1012
Revised Code or use taxes under section 5741.02, 5741.021, 1013
5741.022, or 5741.023 of the Revised Code. Division (A) of this 1014
section does not apply in determining the jurisdiction for which 1015
sellers are required to collect the use tax under section 5741.05 1016
of the Revised Code. This section does not affect the obligation 1017
of a consumer to remit use taxes on the storage, use, or other 1018
consumption of tangible personal property or on the benefit 1019
realized of any service provided, to the jurisdiction of that 1020
storage, use, or consumption, or benefit realized. 1021

(A)(B)(1) As used in this division, "delivery sale" means the 1022
taxable sale of tangible personal property or a service that is 1023
received by a consumer, or a donee designated by the consumer, in 1024
a taxing jurisdiction that is not the taxing jurisdiction in which 1025
the vendor has a fixed place of business. 1026

(2)(a) A vendor with total delivery sales in calendar year 1027
2005 that are less than thirty million dollars may continue to 1028
situs its sales under section 5739.035 of the Revised Code from 1029
May 1, 2006, through April 30, 2007. 1030

(b) A vendor with total delivery sales in calendar year 2006 1031

that are less than five million dollars may continue to situs its 1032
sales under section 5739.035 of the Revised Code from May 1, 2007, 1033
through December 31, 2007. 1034

(c) Beginning January 1, 2008, all vendors shall source their 1035
sales under divisions (C) to (I) of this section. 1036

(3) Once a vendor has total delivery sales that exceed the 1037
dollar amount in division (B)(2)(a) or (b) of this section, the 1038
vendor shall source its sales under divisions (C) to (I) of this 1039
section and shall continue to source its sales under those 1040
divisions, regardless of the amount of the vendor's total delivery 1041
sales in future years. 1042

(C) Except for sales, other than leases, of titled motor 1043
vehicles, titled watercraft, or titled outboard motors as provided 1044
in section 5741.05 of the Revised Code, or as otherwise provided 1045
in this section and section 5739.034 ~~or 5740.10~~ of the Revised 1046
Code, all sales shall be sourced as follows: 1047

(1) If the consumer or a donee designated by the consumer 1048
receives tangible personal property or a service at a vendor's 1049
place of business, the sale shall be sourced to that place of 1050
business. 1051

(2) When the tangible personal property or service is not 1052
received at a vendor's place of business, the sale shall be 1053
sourced to the location known to the vendor where the consumer or 1054
the donee designated by the consumer receives the tangible 1055
personal property or service, including the location indicated by 1056
instructions for delivery to the consumer or the consumer's donee. 1057

(3) If divisions ~~(A)~~(C)(1) and (2) of this section do not 1058
apply, the sale shall be sourced to the location indicated by an 1059
address for the consumer that is available from the vendor's 1060
business records that are maintained in the ordinary course of the 1061
vendor's business, when use of that address does not constitute 1062

bad faith. 1063

(4) If divisions ~~(A)~~(C)(1), (2), and (3) of this section do 1064
not apply, the sale shall be sourced to the location indicated by 1065
an address for the consumer obtained during the consummation of 1066
the sale, including the address associated with the consumer's 1067
payment instrument, if no other address is available, when use of 1068
that address does not constitute bad faith. 1069

(5) If divisions ~~(A)~~(C)(1), (2), (3), and (4) of this section 1070
do not apply, including in the circumstance where the vendor is 1071
without sufficient information to apply any of those divisions, 1072
the sale shall be sourced to the address from which tangible 1073
personal property was shipped, or from which the service was 1074
provided, disregarding any location that merely provided the 1075
electronic transfer of the property sold or service provided. 1076

(6) As used in division ~~(A)~~(C) of this section, "receive" 1077
means taking possession of tangible personal property or making 1078
first use of a service. "Receive" does not include possession by a 1079
shipping company on behalf of a consumer. 1080

~~(B)~~(D)(1) Notwithstanding divisions ~~(A)~~(C)(1) to (5) of this 1081
section, a consumer that is not a holder of a direct payment 1082
permit granted under section 5739.031 of the Revised Code, that 1083
purchases computer software delivered electronically or a service 1084
for use in business, and that knows at the time of purchase that 1085
such software or service will be concurrently available for use in 1086
more than one taxing jurisdiction shall deliver to the vendor in 1087
conjunction with its purchase a multiple points of use exemption 1088
form prescribed by the tax commissioner disclosing this fact. On 1089
receipt of the multiple points of use exemption form, the vendor 1090
is relieved of its obligation to collect, pay, or remit the tax 1091
due, and the consumer must pay the tax directly to the state. 1092

(2) A consumer that delivers such form to a vendor may use 1093

any reasonable, consistent, and uniform method of apportioning the 1094
tax due on the computer software delivered electronically or 1095
service for use in business that is supported by the consumer's 1096
business records as they existed at the time of the sale. 1097

(3) The multiple points of use exemption form shall remain in 1098
effect for all future sales by the vendor to the consumer until it 1099
is revoked in writing by the consumer, except as to the consumer's 1100
specific apportionment of a subsequent sale under division 1101
~~(B)~~(D)(2) of this section and the facts existing at the time of 1102
the sale. 1103

~~(C)~~(E) A person who holds a direct payment permit issued 1104
under section 5739.031 of the Revised Code is not required to 1105
deliver a multiple points of use exemption form to a vendor. But 1106
such permit holder shall comply with division ~~(B)~~(D)(2) of this 1107
section in apportioning the tax due on computer software delivered 1108
electronically or a service used in business that will be 1109
concurrently available for use in more than one taxing 1110
jurisdiction. 1111

~~(D)~~(F)(1) Notwithstanding divisions ~~(A)~~(C)(1) to (5) of this 1112
section, the purchaser of direct mail that is not a holder of a 1113
direct payment permit shall provide to the vendor in conjunction 1114
with the purchase either a direct mail form prescribed by the tax 1115
commissioner, or information to show the jurisdictions to which 1116
the direct mail is delivered to recipients. 1117

(2) Upon receipt of a direct mail form, the vendor is 1118
relieved of all obligations to collect, pay, or remit the 1119
applicable tax and the purchaser is obligated to pay that tax on a 1120
direct pay basis. A direct mail form shall remain in effect for 1121
all future sales of direct mail by the vendor to the purchaser 1122
until it is revoked in writing. 1123

(3) Upon receipt of information from the purchaser showing 1124

the jurisdictions to which the direct mail is delivered to 1125
recipients, the vendor shall collect the tax according to the 1126
delivery information provided by the purchaser. In the absence of 1127
bad faith, the vendor is relieved of any further obligation to 1128
collect tax on any transaction where the vendor has collected tax 1129
pursuant to the delivery information provided by the purchaser. 1130

(4) If the purchaser of direct mail does not have a direct 1131
payment permit and does not provide the vendor with either a 1132
direct mail form or delivery information as required by division 1133
~~(D)~~(F)(1) of this section, the vendor shall collect the tax 1134
according to division ~~(A)~~(C)(5) of this section. Nothing in 1135
division ~~(D)~~(F)(4) of this section shall limit a purchaser's 1136
obligation to pay sales or use tax to any state to which the 1137
direct mail is delivered. 1138

(5) If a purchaser of direct mail provides the vendor with 1139
documentation of direct payment authority, the purchaser shall not 1140
be required to provide a direct mail form or delivery information 1141
to the vendor. 1142

~~(E)~~(G) If the vendor provides lodging to transient guests as 1143
specified in division (B)(2) of section 5739.01 of the Revised 1144
Code, the sale shall be sourced to the location where the lodging 1145
is located. 1146

~~(F)~~(H)(1) As used in this division and division ~~(G)~~(I) of 1147
this section, "transportation equipment" means any of the 1148
following: 1149

(a) Locomotives and railcars that are utilized for the 1150
carriage of persons or property in interstate commerce. 1151

(b) Trucks and truck-tractors with a gross vehicle weight 1152
rating of greater than ten thousand pounds, trailers, 1153
semi-trailers, or passenger buses that are registered through the 1154
international registration plan and are operated under authority 1155

of a carrier authorized and certificated by the United States 1156
department of transportation or another federal authority to 1157
engage in the carriage of persons or property in interstate 1158
commerce. 1159

(c) Aircraft that are operated by air carriers authorized and 1160
certificated by the United States department of transportation or 1161
another federal authority to engage in the carriage of persons or 1162
property in interstate or foreign commerce. 1163

(d) Containers designed for use on and component parts 1164
attached to or secured on the items set forth in division 1165
~~(F)~~(H)(1)(a), (b), or (c) of this section. 1166

(2) A sale, lease, or rental of transportation equipment 1167
shall be sourced pursuant to division ~~(A)~~(C) of this section. 1168

~~(G)~~(I)(1) A lease or rental of tangible personal property 1169
that does not require recurring periodic payments shall be sourced 1170
pursuant to division ~~(A)~~(C) of this section. 1171

(2) A lease or rental of tangible personal property that 1172
requires recurring periodic payments shall be sourced as follows: 1173

(a) In the case of a motor vehicle, other than a motor 1174
vehicle that is transportation equipment, such lease or rental 1175
shall be sourced to the primary property location as follows: 1176

(i) For a lease or rental taxed pursuant to division (A)(2) 1177
of section 5739.02 of the Revised Code, the primary property 1178
location is the address of the lessee or renter used for titling 1179
the motor vehicle pursuant to section 4505.06 of the Revised Code 1180
at the time the lease or rental is consummated. 1181

(ii) For a lease or rental taxed pursuant to division (A)(3) 1182
of section 5739.02 of the Revised Code, the primary property 1183
location for each lease or rental installment is the primary 1184
property location for the period covered by the installment. 1185

(b) In the case of an aircraft, other than an aircraft that 1186
is transportation equipment, such lease or rental shall be sourced 1187
to the primary property location as follows: 1188

(i) For a lease or rental taxed pursuant to division (A)(2) 1189
of section 5739.02 of the Revised Code, the primary property 1190
location is the primary property location at the time the lease or 1191
rental is consummated. 1192

(ii) For a lease or rental taxed pursuant to division (A)(3) 1193
of section 5739.02 of the Revised Code, the primary property 1194
location for each lease or rental installment is the primary 1195
property location for the period covered by the installment. 1196

(c) In the case of a watercraft or an outboard motor required 1197
to be titled in this state pursuant to Chapter 1548. of the 1198
Revised Code, such lease or rental shall be sourced to the primary 1199
property location as follows: 1200

(i) For a lease or rental taxed pursuant to division (A)(2) 1201
of section 5739.02 of the Revised Code, the primary property 1202
location is the address of the lessee or renter shown on the 1203
title. 1204

(ii) For a lease or rental taxed pursuant to division (A)(3) 1205
of section 5739.02 of the Revised Code, the primary property 1206
location for the initial lease or rental installment is the 1207
address of the lessee or renter shown on the title. For each 1208
subsequent installment, the primary property location is the 1209
primary property location for the period covered by the 1210
installment. 1211

(d) In the case of a lease or rental of all other tangible 1212
personal property, other than transportation equipment, such lease 1213
or rental shall be sourced as follows: 1214

(i) For a lease or rental that is taxed pursuant to division 1215

(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. 1246

(4) "End user" means the person who utilizes the 1247
telecommunications service. In the case of a person other than an 1248
individual, "end user" means the individual who utilizes the 1249
service on behalf of the person. 1250

(5) "Home service provider" has the same meaning as in the 1251
"Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 1252
Stat. 631 (2000), 4 U.S.C. 124(5), as amended. 1253

(6) "Place of primary use" means the street address 1254
representative of where the customer's use of the 1255
telecommunications service primarily occurs, which must be the 1256
residential street address or the primary business street address 1257
of the customer. In the case of mobile telecommunications 1258
services, "place of primary use" must be within the licensed 1259
service area of the home service provider. 1260

(7) "Post-paid calling service" means the telecommunications 1261
service obtained by making a payment on a call-by-call basis 1262
either through the use of a credit card or payment mechanism such 1263
as a bank card, travel card, credit card, or debit card, or by 1264
charge made to a telephone number that is not associated with the 1265
origination or termination of the telecommunications service. 1266
"Post-paid calling service" includes a telecommunications service 1267
that would be a prepaid calling service, but for the fact that it 1268
is not exclusively a telecommunications service. 1269

(8) "Prepaid calling service" means the right to access 1270
exclusively a telecommunications service that must be paid for in 1271
advance, that enables the origination of calls using an access 1272
number or authorization code, whether manually or electronically 1273
dialed, and that is sold in predetermined units or dollars of 1274
which the number declines with use in a known amount. 1275

(9) "Service address" means: 1276

(a) The location of the telecommunications equipment to which 1277
a customer's call is charged and from which the call originates or 1278
terminates, regardless of where the call is billed or paid. 1279

(b) If the location in division (A)(9)(a) of this section is 1280
not known, "service address" means the origination point of the 1281
signal of the telecommunications service first identified by 1282
either the seller's telecommunications system or in information 1283
received by the seller from its service provider, where the system 1284
used to transport such signals is not that of the seller. 1285

(c) If the locations in divisions (A)(9)(a) and (b) of this 1286
section are not known, "service address" means the location of the 1287
customer's place of primary use. 1288

(B) The amount of tax due pursuant to sections 5739.02, 1289
5739.021, 5739.023, and 5739.026 of the Revised Code on sales of 1290
telecommunications service, information service, or mobile 1291
telecommunications service, is the sum of the taxes imposed 1292
pursuant to those sections at the sourcing location of the sale as 1293
determined under this section. 1294

(C) Except for the telecommunications services described in 1295
division (E) of this section, the sale of telecommunications 1296
service sold on a call-by-call basis shall be sourced to each 1297
level of taxing jurisdiction where the call originates and 1298
terminates in that jurisdiction, or each level of taxing 1299
jurisdiction where the call either originates or terminates and in 1300
which the service address also is located. 1301

(D) Except for the telecommunications services described in 1302
division (E) of this section, a sale of telecommunications 1303
services sold on a basis other than a call-by-call basis shall be 1304
sourced to the customer's place of primary use. 1305

(E) The sale of the following telecommunications services 1306
shall be sourced to each level of taxing jurisdiction, as follows: 1307

(1) A sale of mobile telecommunications service, other than 1308
air-to-ground radiotelephone service and prepaid calling service, 1309
shall be sourced to the customer's place of primary use as 1310
required by the Mobile Telecommunications Sourcing Act. 1311

(2) A sale of post-paid calling service shall be sourced to 1312
the origination point of the telecommunications signal as first 1313
identified by the service provider's telecommunications system, or 1314
information received by the seller from its service provider, 1315
where the system used to transport such signals is not that of the 1316
seller. 1317

(3) A sale of mobile telecommunications service that is a 1318
prepaid telecommunications service shall be sourced under division 1319
~~(A)(C)~~ of section 5739.033 of the Revised Code, but in or, if 1320
permitted by division (B) of that section, shall be sitused under 1321
section 5739.035 of the Revised Code. In lieu of sourcing the sale 1322
of ~~the~~ that service under division ~~(A)(C)~~(5) of ~~that~~ section 1323
5739.033 of the Revised Code, it may be sourced to the location 1324
associated with the mobile telephone number. 1325

Sec. 5739.035. This section only applies to sales that are 1326
required to be sitused under this section pursuant to division (A) 1327
or (B) of section 5739.033 of the Revised Code. 1328

(A) Except as otherwise provided in this section, the situs 1329
of all sales is the vendor's place of business. 1330

(1) If the consumer or the consumer's agent takes possession 1331
of the tangible personal property at a place of business of the 1332
vendor where the purchase contract or agreement was made, the 1333
situs of the sale is that place of business. 1334

(2) If the consumer or the consumer's agent takes possession 1335
of the tangible personal property other than at a place of 1336
business of the vendor, or takes possession at a warehouse or 1337

similar facility of the vendor, the situs of the sale is the 1338
vendor's place of business where the purchase contract or 1339
agreement was made or the purchase order was received. 1340

(3) If the vendor provides a service specified in division 1341
(B)(3)(a), (b), (c), (d), (n), (o), (r), (s), or (t) of section 1342
5739.01 or makes a sale specified in division (B)(8) of section 1343
5739.01 of the Revised Code, the situs of the sale is the vendor's 1344
place of business where the service is performed or the contract 1345
or agreement for the service was made or the purchase order was 1346
received. 1347

(B) If the vendor is a transient vendor as specified in 1348
division (B) of section 5739.17 of the Revised Code, the situs of 1349
the sale is the vendor's temporary place of business or, if the 1350
transient vendor is the lessor of titled motor vehicles, titled 1351
watercraft, or titled outboard motors, at the location where the 1352
lessee keeps the leased property. 1353

(C) If the vendor makes sales of tangible personal property 1354
from a stock of goods carried in a motor vehicle, from which the 1355
purchaser makes selection and takes possession, or from which the 1356
vendor sells tangible personal property the quantity of which has 1357
not been determined prior to the time the purchaser takes 1358
possession, the situs of the sale is the location of the motor 1359
vehicle when the sale is made. 1360

(D) If the vendor is a delivery vendor as specified in 1361
division (D) of section 5739.17 of the Revised Code, the situs of 1362
the sale is the place where the tangible personal property is 1363
delivered, where the leased property is used, or where the service 1364
is performed or received. 1365

(E) If the vendor provides a service specified in division 1366
(B)(3)(e), (g), (h), (j), (k), (l), (m), (q), or (u) of section 1367
5739.01 of the Revised Code, the situs of the sale is the location 1368

of the consumer where the service is performed or received. 1369

(F) If the vendor provides lodging to transient guests as 1370
specified in division (B)(2) of section 5739.01 of the Revised 1371
Code, the situs of the sale is the location where the lodging is 1372
located. 1373

(G) If the vendor sells a warranty, maintenance or service 1374
contract, or similar agreement as specified in division (B)(7) of 1375
section 5739.01 of the Revised Code and the vendor is a delivery 1376
vendor, the situs of the sale is the location of the consumer. If 1377
the vendor is not a delivery vendor, the situs of the sale is the 1378
vendor's place of business where the contract or agreement was 1379
made, unless the warranty or contract is a component of the sale 1380
of a titled motor vehicle, titled watercraft, or titled outboard 1381
motor, in which case the situs of the sale is the county of 1382
titling. 1383

(H) Except as otherwise provided in this division, if the 1384
vendor sells a prepaid authorization number or a prepaid telephone 1385
calling card, the situs of the sale is the vendor's place of 1386
business and shall be taxed at the time of sale. If the vendor 1387
sells a prepaid authorization number or prepaid telephone calling 1388
card through a telephone call, electronic commerce, or any other 1389
form of remote commerce, the situs of the sale is the consumer's 1390
shipping address, or, if there is no item shipped, at the 1391
consumer's billing address. 1392

Sec. 5739.123. (A) As used in this section, 1393
"destination-based sourcing requirements" means the manner in 1394
which sales are required to be sourced under divisions (C) to (I) 1395
of section 5739.033 of the Revised Code. 1396

(B) A vendor who holds a license issued prior to ~~July~~ May 1, 1397
~~2005~~ 2006, under division (A) of section 5739.17 of the Revised 1398

Code may apply for temporary compensation to assist the vendor in 1399
complying with the destination-based sourcing requirements for the 1400
first six months those sourcing requirements become applicable to 1401
the vendor under section 5739.033 of the Revised Code. The vendor 1402
shall file the application in accordance with division (C) of this 1403
section. The compensation shall be ~~calculated for each~~ the actual 1404
amount of tax collected per county for each month of the six-month 1405
period, ~~and shall equal the amount of the tax reported on the~~ 1406
~~return~~ not to exceed twenty-five dollars per county per month, for 1407
sales of tangible personal property delivered to each county in 1408
which the vendor does not have a fixed place of business and does 1409
not, or is not required to, hold a license issued under division 1410
(A) of section 5739.17 of the Revised Code for that business, ~~not~~ 1411
~~to exceed twenty five dollars per county for each month.~~ Only 1412
amounts paid by the vendor for which the vendor is eligible for a 1413
discount under division (B) of section 5739.12 of the Revised Code 1414
and that are shown on returns filed during that six-month period 1415
shall be considered in calculating the compensation. In no event 1416
shall a vendor receive compensation that exceeds its total cost of 1417
complying with the destination-based sourcing requirements. For 1418
purposes of the six-month compensation period, a partial month 1419
shall be considered a month. 1420

(C) A vendor that applies for compensation under this section 1421
shall file an application with the tax commissioner on a form 1422
prescribed by the commissioner. The application shall be filed 1423
within sixty days after the end of the reporting period that 1424
includes the last day of the last month of the six-month period 1425
for which the vendor is requesting compensation. The commissioner 1426
shall determine the amount of compensation to which the vendor is 1427
entitled, and if that amount is equal to or greater than the 1428
amount claimed on the application, the commissioner shall certify 1429
that amount to the director of budget and management and the 1430
treasurer of state for payment from the general revenue fund. If 1431

the commissioner determines that the amount of compensation to 1432
which the vendor is entitled is less than the amount claimed on 1433
the vendor's application, the commissioner shall proceed in 1434
accordance with section 5703.70 of the Revised Code. 1435

(D) The compensation provided under this section shall not 1436
reduce the amount required to be returned to counties and transit 1437
authorities under section 5739.21 of the Revised Code. 1438

Sec. 5739.24. (A) As used in this section: 1439

(1) "Destination-based sourcing requirements" has the same 1440
meaning as in section 5739.123 of the Revised Code. 1441

(2) "Impacted county" means a county having a population of 1442
less than seventy-five thousand as of the decennial census of 2000 1443
taken by the United States census bureau. 1444

(3) "Master account holder" means a person that holds more 1445
than one vendor's license under division (A) of section 5739.17 of 1446
the Revised Code, operates in multiple tax jurisdictions under the 1447
same ownership, and files or is required to file a consolidated 1448
return under section 5739.12 of the Revised Code. 1449

(4) "Tax jurisdiction" means a county or, if applicable, the 1450
portion of a county in which a transit authority has territory. 1451

(B)(1) ~~Within~~ Beginning in 2006, within thirty days after the 1452
thirtieth day of June and the thirty-first day of December of each 1453
year, a master account holder that makes a sale that is subject to 1454
the destination-based sourcing requirements shall file with the 1455
tax commissioner a report that details the total taxable sales it 1456
made for the prior six-month period in each tax jurisdiction and 1457
at each fixed place of business for which the master account 1458
holder holds or should hold a license, irrespective of where those 1459
sales were sourced under those requirements. The commissioner may 1460
extend the time for filing the report under this section. 1461

(2) If the report required by division (B)(1) of this section 1462
is not timely filed by a master account holder, the tax 1463
commissioner shall mail notice of a delinquent report to the 1464
holder. In addition to any other penalties or additional charges 1465
imposed under this chapter, the commissioner may impose a penalty 1466
of up to fifty dollars for each fixed place of business of the 1467
master account holder. If the report is filed within fifteen days 1468
after the commissioner mails the delinquency notice, the penalty 1469
may be remitted in full or in part by the commissioner. But if the 1470
master account holder fails to file the report within fifteen days 1471
after the commissioner mails the notice, the commissioner shall 1472
impose a penalty of up to one hundred dollars for each fixed place 1473
of business of the master account holder. This penalty may not be 1474
remitted in full by the commissioner. A penalty imposed under this 1475
division is subject to collection and assessment in the same 1476
manner as any tax levied under this chapter. 1477

(C)(1) ~~Within~~ Beginning in 2006, within seventy-five days 1478
after the ~~thirtieth~~ thirty-first day of ~~June~~ July each year and 1479
the thirty-first day of ~~December~~ January of ~~each~~ the following 1480
year, the tax commissioner shall determine for each county both of 1481
the following: 1482

(a) The amount of taxes ~~paid~~ reported on returns filed by all 1483
vendors licensed under division (A) of section 5739.17 of the 1484
Revised Code that were levied by sections 5739.021 and 5739.026 of 1485
the Revised Code and were ~~collected by the county~~ reported as due 1486
in accordance with the destination-based sourcing requirements; 1487

(b) The amount of taxes levied by those sections that would 1488
have been paid to the county by vendors licensed under division 1489
(A) of section 5739.17 of the Revised Code if the taxes had been 1490
collected ~~by the county~~ in accordance with section 5739.035 of the 1491
Revised Code. 1492

The commissioner may make any adjustments that are necessary 1493
to account for delinquent tax returns or reports. 1494

(2) In making the determination required by division (C)(1) 1495
of this section, the commissioner shall use the lesser of the 1496
county's tax rate in effect as of January 1, ~~2005~~ 2006, or the 1497
actual tax rate in effect for the six-month period for which the 1498
compensation was calculated. 1499

(3) The commissioner also shall calculate the percentage 1500
difference between the amounts determined under divisions 1501
(C)(1)(a) and (b) of this section by using a fraction, with the 1502
amount determined under division (C)(1)(a) of this section in the 1503
numerator, and the amount determined under division (C)(1)(b) of 1504
this section in the denominator. 1505

(D)(1) If the percentage difference calculated under division 1506
(C)(3) of this section for a county is ninety-six per cent or 1507
less, and the county is an impacted county under this section, the 1508
county shall receive compensation. ~~Within~~ Beginning in 2006, 1509
within ninety days after the ~~thirtieth~~ thirty-first day of ~~June~~ 1510
July each year and the thirty-first day of ~~December~~ January of 1511
~~each the following~~ year, the tax commissioner, in the next ensuing 1512
payment to be made under division (B)(1) of section 5739.21 of the 1513
Revised Code, shall in addition provide from the general revenue 1514
fund to such county compensation in the amount of ninety-eight per 1515
cent of the denominator calculated under division (C)(3) of this 1516
section, minus the numerator calculated under division (C)(3) of 1517
this section. 1518

(2) A county that is entitled to compensation under division 1519
(D)(1) of this section may request an advance payment of that 1520
compensation. The commissioner shall adopt rules that establish 1521
the manner by which such county may make the request and the 1522
method the commissioner will use to determine the amount of the 1523

advance payment to be made to the county. Compensation provided 1524
under division (D)(1) of this section shall be adjusted 1525
accordingly to account for advance payments made under division 1526
(D)(2) of this section. 1527

(E) If, under division (C)(1) of this section, the tax 1528
commissioner determines that a county ~~collected~~ received more 1529
taxes under the destination-based sourcing requirements than it 1530
would have ~~collected~~ received if taxes had been paid in accordance 1531
with section 5739.035 of the Revised Code, the county is a 1532
windfall county under this division. ~~Within~~ Beginning in 2006, 1533
within ninety days after the ~~thirtieth~~ thirty-first day of ~~June~~ 1534
July each year and the thirty-first day of ~~December~~ January of 1535
~~each~~ the following year, the commissioner, in the next ensuing 1536
payment to be made under division (B)(1) of section 5739.21 of the 1537
Revised Code, shall reduce the amount to be returned to each 1538
windfall county by the total amount of excess taxes that would 1539
have been received by all windfall counties in proportion to the 1540
total amount needed to compensate counties under division (D) of 1541
this section. 1542

(F) The commissioner shall make available to the public the 1543
determinations made under division (C) of this section, but any 1544
data obtained from taxpayers under this section or that would 1545
identify those taxpayers shall remain confidential. 1546

(G) There is hereby created the county compensation tax study 1547
committee. The committee shall consist of the following seven 1548
members: the tax commissioner, three members of the senate 1549
appointed by the president of the senate, and three members of the 1550
house of representatives appointed by the speaker of the house of 1551
representatives. The appointments shall be made not later than 1552
January 31, 2006. The tax commissioner shall be the chairperson of 1553
the committee and the department of taxation shall provide any 1554
information and assistance that is required by the committee to 1555

carry out its duties. The committee shall study the extent to 1556
which each county has been impacted by the destination-based 1557
sourcing requirements. Not later than June 30, 2006, the committee 1558
shall issue a report of its findings and shall make 1559
recommendations to the president of the senate and the speaker of 1560
the house of representatives, at which time the committee shall 1561
cease to exist. 1562

Sec. 5740.02. (A)(1) The state of Ohio shall participate in 1563
discussions with other states regarding the development of a 1564
streamlined sales and use tax system to reduce the burden and cost 1565
for all sellers to collect this state's sales and use taxes. 1566

(2) Subject to division (B) of this section, the state also 1567
shall participate in meetings of the implementing states or the 1568
governing board of the agreement to review ~~or~~, amend, or 1569
administer the terms of the agreement to simplify and modernize 1570
sales and use tax administration that embodies the requirements 1571
set forth in section 5740.05 of the Revised Code. For purposes of 1572
these meetings, the state shall be represented by three delegates. 1573
The tax commissioner or the commissioner's designee shall be the 1574
chairperson of the delegation. The other delegates shall be one 1575
delegate chosen by the speaker of the house of representatives and 1576
one delegate chosen by the president of the senate. In all matters 1577
where voting by the member states or the governing board is 1578
required to amend the agreement, the chairperson, based on the 1579
votes of the majority of the delegation, shall cast this state's 1580
vote. 1581

(B) The state shall not participate in the meetings of the 1582
implementing states or the governing board referred to in division 1583
(A)(2) of this section unless the meetings are conducted in 1584
accordance with requirements substantially similar to those 1585
described in divisions (C) and (F) of section 121.22 of the 1586

Revised Code, as if the participants of the meetings were a public 1587
body as defined in that section, except such meetings may be 1588
closed during any discussion pertaining to proprietary information 1589
of a person if the person so requests, personnel matters, 1590
competitive bidding, certification of service providers, or 1591
matters substantially similar to those described in divisions 1592
(G)(2), (3), or (5) of section 121.22 of the Revised Code. The 1593
state may participate in teleconferences, special meetings, 1594
meetings of working groups, committees, or steering committees if 1595
they are conducted in accordance with the public participation 1596
rules applicable to such meetings, as established by the 1597
implementing states entitled to participate in discussions to 1598
finalize the agreement, or the governing board. 1599

(C) As used in this section, ~~"meetings:~~ 1600

(1) "Meetings of the implementing states" means meetings of 1601
the entire body of the states that are entitled to participate in 1602
discussions to finalize the agreement because they have enacted 1603
legislation based on the uniform sales and use tax administration 1604
act, approved January 24, 2001, or the simplified sales and use 1605
tax administration act, approved January 27, 2001. 1606

(2) "Governing board" means the board that, under the terms 1607
of the agreement, is responsible for the administration and 1608
operation of the agreement. 1609

Section 2. That existing sections 5739.01, 5739.031, 1610
5739.033, 5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 and 1611
section 5740.10 of the Revised Code are hereby repealed. 1612

Section 3. (A)(1) Sections 5739.01, 5739.031, 5739.033, 1613
5739.034, 5739.035, 5739.123, 5739.24, and 5740.02 of the Revised 1614
Code, as amended by this act, provide for or are essential to the 1615
implementation of a tax levy. Therefore, under Ohio Constitution, 1616

Article II, Section 1d, those sections as amended by this act are 1617
not subject to the referendum and go into immediate effect when 1618
this act becomes law. 1619

(2) The repeal by this act of section 5740.10 of the Revised 1620
Code provides for or is essential to the implementation of a tax 1621
levy. Therefore, under Ohio Constitution, Article II, Section 1d, 1622
the repeal is not subject to the referendum and goes into 1623
immediate effect when this act becomes law. 1624

(B) This section provides for or is essential to the 1625
implementation of a tax levy. Therefore, under Ohio Constitution, 1626
Article II, Section 1d, this section is not subject to the 1627
referendum and goes into immediate effect when this act becomes 1628
law. 1629

Section 4. Section 5739.01 of the Revised Code is presented 1630
in this act as a composite of the section as amended by both Am. 1631
Sub. H.B. 95 and Am. Sub. S.B. 37 of the 125th General Assembly. 1632
The General Assembly, applying the principle stated in division 1633
(B) of section 1.52 of the Revised Code that amendments are to be 1634
harmonized if reasonably capable of simultaneous operation, finds 1635
that the composite is the resulting version of the section in 1636
effect prior to the effective date of the section as presented in 1637
this act. 1638