

As Passed by the Senate

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Sub. S. B. No. 26

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

—

A B I L L

To amend sections 5739.031, 5739.033, 5739.034, 1
5739.035, 5739.123, and 5740.10 of the Revised 2
Code to phase-in destination-based sourcing of 3
sales for small businesses. 4

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

Section 1. That sections 5739.031, 5739.033, 5739.034, 5
5739.035, 5739.123, and 5740.10 of the Revised Code be amended to 6
read as follows: 7

Sec. 5739.031. (A) Upon application, the tax commissioner may 8
issue a direct payment permit that authorizes a consumer to pay 9
the sales tax levied by or pursuant to section 5739.02, 5739.021, 10
5739.023, or 5739.026 of the Revised Code or the use tax levied by 11
or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of 12
the Revised Code directly to the state and waives the collection 13
of the tax by the vendor or seller if payment directly to the 14
state would improve compliance and increase the efficiency of the 15
administration of the tax. The commissioner may adopt rules 16
establishing the criteria for the issuance of such permits. 17

(B) Each permit holder, on or before the twenty-third day of 18

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

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

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

holder. 51

(D) It shall be the duty of every permit holder required to 52
make a return and pay its tax under this section to keep and 53
preserve suitable records of purchases together with invoices of 54
purchases, bills of lading, asset ledgers, depreciation schedules, 55
transfer journals, and such other primary and secondary records 56
and documents in such form as the commissioner requires. All such 57
records and other documents shall be open during business hours to 58
the inspection of the tax commissioner, and shall be preserved for 59
a period of four years, unless the commissioner, in writing, has 60
authorized their destruction or disposal at an earlier date, or by 61
order or by reason of a waiver of the four-year time limitation 62
pursuant to section 5739.16 of the Revised Code requires that they 63
be kept longer. 64

(E) A permit granted pursuant to this section shall continue 65
to be valid until surrendered by the holder or canceled for cause 66
by the tax commissioner. 67

(F) Persons who hold a direct payment permit that has not 68
been canceled shall not be required to issue exemption 69
certificates and shall not be required to pay the tax as 70
prescribed in sections 5739.03, 5739.033, and 5741.12 of the 71
Revised Code. Such persons shall notify vendors and sellers from 72
whom purchases of tangible personal property or services are made, 73
of their direct payment permit number and that the tax is being 74
paid directly to the state. Upon receipt of such notice, such 75
vendor or seller shall be absolved from all duties and liabilities 76
imposed by section 5739.03 or 5741.04 of the Revised Code with 77
respect to sales of tangible personal property or services to such 78
permit holder. 79

Vendors and sellers who make sales upon which the tax is not 80
collected by reason of the provisions of this section shall 81
maintain records in such manner that the amount involved and 82

identity of the purchaser may be ascertained. The receipts from 83
such sales shall not be subject to the tax levied in section 84
5739.10 of the Revised Code. 85

Upon the cancellation or surrender of a direct payment 86
permit, the provisions of sections 5739.03, 5741.04, and 5741.12 87
of the Revised Code shall immediately apply to all purchases made 88
subsequent to such cancellation or surrender by the person who 89
previously held such permit, and such person shall so notify 90
vendors and sellers from whom purchases of tangible personal 91
property or services are made, in writing, prior to or at the time 92
of the first purchase after such cancellation or surrender. Upon 93
receipt of such notice, the vendor shall be subject to the 94
provisions of sections 5739.03 and 5739.10 of the Revised Code and 95
the seller shall be subject to the provisions of section 5741.04 96
of the Revised Code, with respect to all sales subsequently made 97
to such person. Failure of any such person to notify vendors or 98
sellers from whom purchases of tangible personal property or 99
services are made of the cancellation or surrender of a direct 100
payment permit shall be considered as a refusal to pay the tax by 101
the person required to issue such notice. 102

Sec. 5739.033. ~~This~~ (A) Except as provided in division (B) of 103
this section, divisions (C) to (I) of this section applies apply 104
to sales made on and after July 1, 2005. Sales made before July 1, 105
2005, are subject to section 5739.035 of the Revised Code. On and 106
after January 1, 2005, any vendor may irrevocably elect to comply 107
with divisions (C) to (I) of this section for all of the vendor's 108
sales and places of business in this state. 109

The amount of tax due pursuant to sections 5739.02, 5739.021, 110
5739.023, and 5739.026 of the Revised Code is the sum of the taxes 111
imposed pursuant to those sections at the sourcing location of the 112
sale as determined under this section or, if applicable, under 113

division (C) of section 5739.031 or section 5739.034 of the 114
Revised Code, or at the situs of the sale as determined under 115
section 5739.035 of the Revised Code. This section applies only to 116
a vendor's or seller's obligation to collect and remit sales taxes 117
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the 118
Revised Code or use taxes under section 5741.02, 5741.021, 119
5741.022, or 5741.023 of the Revised Code. Division (A) of this 120
section does not apply in determining the jurisdiction for which 121
sellers are required to collect the use tax under section 5741.05 122
of the Revised Code. This section does not affect the obligation 123
of a consumer to remit use taxes on the storage, use, or other 124
consumption of tangible personal property or on the benefit 125
realized of any service provided, to the jurisdiction of that 126
storage, use, or consumption, or benefit realized. 127

~~(A)~~(B)(1) As used in this division, "delivery sale" means the 128
sale of tangible personal property or a service that is received 129
by a consumer, or a donee designated by the consumer, in a taxing 130
jurisdiction that is not the taxing jurisdiction in which the 131
vendor has a fixed place of business. 132

(2)(a) A vendor with total delivery sales in calendar year 133
2004 that are less than two million dollars may continue to situs 134
its sales under section 5739.035 of the Revised Code in calendar 135
years 2005 and 2006. 136

(b) A vendor with total delivery sales in calendar year 2006 137
that are less than one million dollars may continue to situs its 138
sales under section 5739.035 of the Revised Code in calendar year 139
2007. 140

(c) A vendor with total delivery sales in calendar year 2007 141
that are less than five hundred thousand dollars may continue to 142
situs its sales under section 5739.035 of the Revised Code in 143
calendar year 2008. 144

(d) In calendar year 2009 and thereafter, all vendors shall 145
source their sales under divisions (C) to (I) of this section. 146

(3) If, in calendar year 2004, 2005, 2006, 2007, or 2008, a 147
vendor has total delivery sales that exceed the dollar amount in 148
division (B)(2)(a), (b), or (c) of this section that is applicable 149
to that calendar year, the vendor shall source its sales under 150
divisions (C) to (I) of this section and shall continue to source 151
its sales under those divisions, regardless of the amount of the 152
vendor's total delivery sales in future years. 153

(C) Except for sales, other than leases, of titled motor 154
vehicles, titled watercraft, or titled outboard motors as provided 155
in section 5741.05 of the Revised Code, or as otherwise provided 156
in this section and section 5739.034 or 5740.10 of the Revised 157
Code, all sales shall be sourced as follows: 158

(1) If the consumer or a donee designated by the consumer 159
receives tangible personal property or a service at a vendor's 160
place of business, the sale shall be sourced to that place of 161
business. 162

(2) When the tangible personal property or service is not 163
received at a vendor's place of business, the sale shall be 164
sourced to the location known to the vendor where the consumer or 165
the donee designated by the consumer receives the tangible 166
personal property or service, including the location indicated by 167
instructions for delivery to the consumer or the consumer's donee. 168

(3) If divisions ~~(A)~~(C)(1) and (2) of this section do not 169
apply, the sale shall be sourced to the location indicated by an 170
address for the consumer that is available from the vendor's 171
business records that are maintained in the ordinary course of the 172
vendor's business, when use of that address does not constitute 173
bad faith. 174

(4) If divisions ~~(A)~~(C)(1), (2), and (3) of this section do 175

not apply, the sale shall be sourced to the location indicated by 176
an address for the consumer obtained during the consummation of 177
the sale, including the address associated with the consumer's 178
payment instrument, if no other address is available, when use of 179
that address does not constitute bad faith. 180

(5) If divisions ~~(A)~~(C)(1), (2), (3), and (4) of this section 181
do not apply, including in the circumstance where the vendor is 182
without sufficient information to apply any of those divisions, 183
the sale shall be sourced to the address from which tangible 184
personal property was shipped, or from which the service was 185
provided, disregarding any location that merely provided the 186
electronic transfer of the property sold or service provided. 187

(6) As used in division ~~(A)~~(C) of this section, "receive" 188
means taking possession of tangible personal property or making 189
first use of a service. "Receive" does not include possession by a 190
shipping company on behalf of a consumer. 191

~~(B)~~(D)(1) Notwithstanding divisions ~~(A)~~(C)(1) to (5) of this 192
section, a consumer that is not a holder of a direct payment 193
permit granted under section 5739.031 of the Revised Code, that 194
purchases computer software delivered electronically or a service 195
for use in business, and that knows at the time of purchase that 196
such software or service will be concurrently available for use in 197
more than one taxing jurisdiction shall deliver to the vendor in 198
conjunction with its purchase a multiple points of use exemption 199
form prescribed by the tax commissioner disclosing this fact. On 200
receipt of the multiple points of use exemption form, the vendor 201
is relieved of its obligation to collect, pay, or remit the tax 202
due, and the consumer must pay the tax directly to the state. 203

(2) A consumer that delivers such form to a vendor may use 204
any reasonable, consistent, and uniform method of apportioning the 205
tax due on the computer software delivered electronically or 206
service for use in business that is supported by the consumer's 207

business records as they existed at the time of the sale. 208

(3) The multiple points of use exemption form shall remain in 209
effect for all future sales by the vendor to the consumer until it 210
is revoked in writing by the consumer, except as to the consumer's 211
specific apportionment of a subsequent sale under division 212
~~(B)~~(D)(2) of this section and the facts existing at the time of 213
the sale. 214

~~(C)~~(E) A person who holds a direct payment permit issued 215
under section 5739.031 of the Revised Code is not required to 216
deliver a multiple points of use exemption form to a vendor. But 217
such permit holder shall comply with division ~~(B)~~(D)(2) of this 218
section in apportioning the tax due on computer software delivered 219
electronically or a service used in business that will be 220
concurrently available for use in more than one taxing 221
jurisdiction. 222

~~(D)~~(F)(1) Notwithstanding divisions ~~(A)~~(C)(1) to (5) of this 223
section, the purchaser of direct mail that is not a holder of a 224
direct payment permit shall provide to the vendor in conjunction 225
with the purchase either a direct mail form prescribed by the tax 226
commissioner, or information to show the jurisdictions to which 227
the direct mail is delivered to recipients. 228

(2) Upon receipt of a direct mail form, the vendor is 229
relieved of all obligations to collect, pay, or remit the 230
applicable tax and the purchaser is obligated to pay that tax on a 231
direct pay basis. A direct mail form shall remain in effect for 232
all future sales of direct mail by the vendor to the purchaser 233
until it is revoked in writing. 234

(3) Upon receipt of information from the purchaser showing 235
the jurisdictions to which the direct mail is delivered to 236
recipients, the vendor shall collect the tax according to the 237
delivery information provided by the purchaser. In the absence of 238

bad faith, the vendor is relieved of any further obligation to 239
collect tax on any transaction where the vendor has collected tax 240
pursuant to the delivery information provided by the purchaser. 241

(4) If the purchaser of direct mail does not have a direct 242
payment permit and does not provide the vendor with either a 243
direct mail form or delivery information as required by division 244
~~(D)~~(F)(1) of this section, the vendor shall collect the tax 245
according to division ~~(A)~~(C)(5) of this section. Nothing in 246
division ~~(D)~~(F)(4) of this section shall limit a purchaser's 247
obligation to pay sales or use tax to any state to which the 248
direct mail is delivered. 249

(5) If a purchaser of direct mail provides the vendor with 250
documentation of direct payment authority, the purchaser shall not 251
be required to provide a direct mail form or delivery information 252
to the vendor. 253

~~(E)~~(G) If the vendor provides lodging to transient guests as 254
specified in division (B)(2) of section 5739.01 of the Revised 255
Code, the sale shall be sourced to the location where the lodging 256
is located. 257

~~(F)~~(H)(1) As used in this division and division ~~(G)~~(I) of 258
this section, "transportation equipment" means any of the 259
following: 260

(a) Locomotives and railcars that are utilized for the 261
carriage of persons or property in interstate commerce. 262

(b) Trucks and truck-tractors with a gross vehicle weight 263
rating of greater than ten thousand pounds, trailers, 264
semi-trailers, or passenger buses that are registered through the 265
international registration plan and are operated under authority 266
of a carrier authorized and certificated by the United States 267
department of transportation or another federal authority to 268
engage in the carriage of persons or property in interstate 269

commerce. 270

(c) Aircraft that are operated by air carriers authorized and 271
certificated by the United States department of transportation or 272
another federal authority to engage in the carriage of persons or 273
property in interstate or foreign commerce. 274

(d) Containers designed for use on and component parts 275
attached to or secured on the items set forth in division 276
~~(F)~~(H)(1)(a), (b), or (c) of this section. 277

(2) A sale, lease, or rental of transportation equipment 278
shall be sourced pursuant to division ~~(A)~~(C) of this section. 279

~~(G)~~(I)(1) A lease or rental of tangible personal property 280
that does not require recurring periodic payments shall be sourced 281
pursuant to division ~~(A)~~(C) of this section. 282

(2) A lease or rental of tangible personal property that 283
requires recurring periodic payments shall be sourced as follows: 284

(a) In the case of a motor vehicle, other than a motor 285
vehicle that is transportation equipment, such lease or rental 286
shall be sourced to the primary property location as follows: 287

(i) For a lease or rental taxed pursuant to division (A)(2) 288
of section 5739.02 of the Revised Code, the primary property 289
location is the address of the lessee or renter used for titling 290
the motor vehicle pursuant to section 4505.06 of the Revised Code 291
at the time the lease or rental is consummated. 292

(ii) For a lease or rental taxed pursuant to division (A)(3) 293
of section 5739.02 of the Revised Code, the primary property 294
location for each lease or rental installment is the primary 295
property location for the period covered by the installment. 296

(b) In the case of an aircraft, other than an aircraft that 297
is transportation equipment, such lease or rental shall be sourced 298
to the primary property location as follows: 299

(i) For a lease or rental taxed pursuant to division (A)(2) 300
of section 5739.02 of the Revised Code, the primary property 301
location is the primary property location at the time the lease or 302
rental is consummated. 303

(ii) For a lease or rental taxed pursuant to division (A)(3) 304
of section 5739.02 of the Revised Code, the primary property 305
location for each lease or rental installment is the primary 306
property location for the period covered by the installment. 307

(c) In the case of a watercraft or an outboard motor required 308
to be titled in this state pursuant to Chapter 1548. of the 309
Revised Code, such lease or rental shall be sourced to the primary 310
property location as follows: 311

(i) For a lease or rental taxed pursuant to division (A)(2) 312
of section 5739.02 of the Revised Code, the primary property 313
location is the address of the lessee or renter shown on the 314
title. 315

(ii) For a lease or rental taxed pursuant to division (A)(3) 316
of section 5739.02 of the Revised Code, the primary property 317
location for the initial lease or rental installment is the 318
address of the lessee or renter shown on the title. For each 319
subsequent installment, the primary property location is the 320
primary property location for the period covered by the 321
installment. 322

(d) In the case of a lease or rental of all other tangible 323
personal property, other than transportation equipment, such lease 324
or rental shall be sourced as follows: 325

(i) For a lease or rental that is taxed pursuant to division 326
(A)(2) of section 5739.02 of the Revised Code, the lease or rental 327
shall be sourced pursuant to division ~~(A)~~(C) of this section at 328
the time the lease or rental is consummated. 329

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

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

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

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

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

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

individual, "end user" means the individual who utilizes the 360
service on behalf of the person. 361

(5) "Home service provider" has the same meaning as in the 362
"Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 363
Stat. 631 (2000), 4 U.S.C. 124(5), as amended. 364

(6) "Place of primary use" means the street address 365
representative of where the customer's use of the 366
telecommunications service primarily occurs, which must be the 367
residential street address or the primary business street address 368
of the customer. In the case of mobile telecommunications 369
services, "place of primary use" must be within the licensed 370
service area of the home service provider. 371

(7) "Post-paid calling service" means the telecommunications 372
service obtained by making a payment on a call-by-call basis 373
either through the use of a credit card or payment mechanism such 374
as a bank card, travel card, credit card, or debit card, or by 375
charge made to a telephone number that is not associated with the 376
origination or termination of the telecommunications service. 377
"Post-paid calling service" includes a telecommunications service 378
that would be a prepaid calling service, but for the fact that it 379
is not exclusively a telecommunications service. 380

(8) "Prepaid calling service" means the right to access 381
exclusively a telecommunications service that must be paid for in 382
advance, that enables the origination of calls using an access 383
number or authorization code, whether manually or electronically 384
dialed, and that is sold in predetermined units or dollars of 385
which the number declines with use in a known amount. 386

(9) "Service address" means: 387

(a) The location of the telecommunications equipment to which 388
a customer's call is charged and from which the call originates or 389
terminates, regardless of where the call is billed or paid. 390

(b) If the location in division (A)(9)(a) of this section is 391
not known, "service address" means the origination point of the 392
signal of the telecommunications service first identified by 393
either the seller's telecommunications system or in information 394
received by the seller from its service provider, where the system 395
used to transport such signals is not that of the seller. 396

(c) If the locations in divisions (A)(9)(a) and (b) of this 397
section are not known, "service address" means the location of the 398
customer's place of primary use. 399

(B) The amount of tax due pursuant to sections 5739.02, 400
5739.021, 5739.023, and 5739.026 of the Revised Code on sales of 401
telecommunications service, information service, or mobile 402
telecommunications service, is the sum of the taxes imposed 403
pursuant to those sections at the sourcing location of the sale as 404
determined under this section. 405

(C) Except for the telecommunications services described in 406
division (E) of this section, the sale of telecommunications 407
service sold on a call-by-call basis shall be sourced to each 408
level of taxing jurisdiction where the call originates and 409
terminates in that jurisdiction, or each level of taxing 410
jurisdiction where the call either originates or terminates and in 411
which the service address also is located. 412

(D) Except for the telecommunications services described in 413
division (E) of this section, a sale of telecommunications 414
services sold on a basis other than a call-by-call basis shall be 415
sourced to the customer's place of primary use. 416

(E) The sale of the following telecommunications services 417
shall be sourced to each level of taxing jurisdiction, as follows: 418

(1) A sale of mobile telecommunications service, other than 419
air-to-ground radiotelephone service and prepaid calling service, 420
shall be sourced to the customer's place of primary use as 421

required by the Mobile Telecommunications Sourcing Act. 422

(2) A sale of post-paid calling service shall be sourced to 423
the origination point of the telecommunications signal as first 424
identified by the service provider's telecommunications system, or 425
information received by the seller from its service provider, 426
where the system used to transport such signals is not that of the 427
seller. 428

(3) A sale of mobile telecommunications service that is a 429
prepaid telecommunications service shall be sourced under division 430
~~(A)(C)~~ of section 5739.033 of the Revised Code, ~~but in or, if~~ 431
permitted by division (B) of that section, shall be sitused under 432
section 5739.035 of the Revised Code. In lieu of sourcing the sale 433
of ~~the~~ that service under division ~~(A)(C)~~(5) of ~~that~~ section 434
5739.033 of the Revised Code, it may be sourced to the location 435
associated with the mobile telephone number. 436

Sec. 5739.035. This section only applies to sales that are 437
required to be sitused under this section pursuant to division (A) 438
or (B) of section 5739.033 of the Revised Code. 439

(A) Except as otherwise provided in this section, the situs 440
of all sales is the vendor's place of business. 441

(1) If the consumer or the consumer's agent takes possession 442
of the tangible personal property at a place of business of the 443
vendor where the purchase contract or agreement was made, the 444
situs of the sale is that place of business. 445

(2) If the consumer or the consumer's agent takes possession 446
of the tangible personal property other than at a place of 447
business of the vendor, or takes possession at a warehouse or 448
similar facility of the vendor, the situs of the sale is the 449
vendor's place of business where the purchase contract or 450
agreement was made or the purchase order was received. 451

(3) If the vendor provides a service specified in division 452
(B)(3)(a), (b), (c), (d), (n), (o), (r), (s), or (t) of section 453
5739.01 or makes a sale specified in division (B)(8) of section 454
5739.01 of the Revised Code, the situs of the sale is the vendor's 455
place of business where the service is performed or the contract 456
or agreement for the service was made or the purchase order was 457
received. 458

(B) If the vendor is a transient vendor as specified in 459
division (B) of section 5739.17 of the Revised Code, the situs of 460
the sale is the vendor's temporary place of business or, if the 461
transient vendor is the lessor of titled motor vehicles, titled 462
watercraft, or titled outboard motors, at the location where the 463
lessee keeps the leased property. 464

(C) If the vendor makes sales of tangible personal property 465
from a stock of goods carried in a motor vehicle, from which the 466
purchaser makes selection and takes possession, or from which the 467
vendor sells tangible personal property the quantity of which has 468
not been determined prior to the time the purchaser takes 469
possession, the situs of the sale is the location of the motor 470
vehicle when the sale is made. 471

(D) If the vendor is a delivery vendor as specified in 472
division (D) of section 5739.17 of the Revised Code, the situs of 473
the sale is the place where the tangible personal property is 474
delivered, where the leased property is used, or where the service 475
is performed or received. 476

(E) If the vendor provides a service specified in division 477
(B)(3)(e), (g), (h), (j), (k), (l), (m), (q), or (u) of section 478
5739.01 of the Revised Code, the situs of the sale is the location 479
of the consumer where the service is performed or received. 480

(F) If the vendor provides lodging to transient guests as 481
specified in division (B)(2) of section 5739.01 of the Revised 482

Code, the situs of the sale is the location where the lodging is 483
located. 484

(G) If the vendor sells a warranty, maintenance or service 485
contract, or similar agreement as specified in division (B)(7) of 486
section 5739.01 of the Revised Code and the vendor is a delivery 487
vendor, the situs of the sale is the location of the consumer. If 488
the vendor is not a delivery vendor, the situs of the sale is the 489
vendor's place of business where the contract or agreement was 490
made, unless the warranty or contract is a component of the sale 491
of a titled motor vehicle, titled watercraft, or titled outboard 492
motor, in which case the situs of the sale is the county of 493
titling. 494

(H) Except as otherwise provided in this division, if the 495
vendor sells a prepaid authorization number or a prepaid telephone 496
calling card, the situs of the sale is the vendor's place of 497
business and shall be taxed at the time of sale. If the vendor 498
sells a prepaid authorization number or prepaid telephone calling 499
card through a telephone call, electronic commerce, or any other 500
form of remote commerce, the situs of the sale is the consumer's 501
shipping address, or, if there is no item shipped, at the 502
consumer's billing address. 503

Sec. 5739.123. (A) As used in this section, 504
"destination-based sourcing requirements" means the manner in 505
which sales are required to be sourced under divisions (C) to (I) 506
of section 5739.033 of the Revised Code. 507

(B) A vendor who holds a license issued prior to July 1, 508
2005, under division (A) of section 5739.17 of the Revised Code 509
may apply for temporary compensation to assist the vendor in 510
complying with the destination-based sourcing requirements for the 511
first six months those sourcing requirements become applicable to 512
the vendor under section 5739.033 of the Revised Code. The vendor 513

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

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

(D) The compensation provided under this section shall not 546
reduce the amount required to be returned to counties and transit 547
authorities under section 5739.21 of the Revised Code. 548

Sec. 5740.10. As used in this section, "vendors" means 549
persons licensed under division (A) of section 5739.17 of the 550
Revised Code that have ~~limited Ohio taxable~~ delivery sales, as 551
~~defined by the tax commissioner under this~~ in division (B) of 552
section 5739.033 of the Revised Code. 553

To address the impact the change from origin-based sourcing 554
under section 5739.035 of the Revised Code to destination-based 555
sourcing under section 5739.033 of the Revised Code has on 556
vendors, the tax commissioner or the commissioner's designee shall 557
work with the states that are implementing the ~~interstate~~ 558
streamlined sales and use tax agreement to encourage the adoption 559
of an amendment to the agreement that allows states to mitigate 560
the impact by allowing vendors that have delivery sales to source 561
sales at the vendors' places of business. ~~If the amendment is~~ 562
~~adopted or if this change in sourcing is otherwise allowed without~~ 563
~~amendment of the agreement, the commissioner shall adopt a rule~~ 564
~~that exempts vendors from destination based sourcing under section~~ 565
~~5739.033 of the Revised Code, but that otherwise keeps Ohio in~~ 566
~~substantial compliance with the agreement.~~ 567

Section 2. That existing sections 5739.031, 5739.033, 568
5739.034, 5739.035, 5739.123, and 5740.10 of the Revised Code are 569
hereby repealed. 570

Section 3. Sections 5739.031, 5739.033, 5739.034, 5739.035, 571
5739.123, and 5740.10 of the Revised Code, as amended by this act, 572
provide for or are essential to the implementation of a tax levy. 573
Therefore, under Ohio Constitution, Article II, Section 1d, those 574
sections as amended by this act are not subject to the referendum 575

and go into immediate effect when this act becomes law. 576

This section provides for or is essential to the 577
implementation of a tax levy. Therefore, under Ohio Constitution, 578
Article II, Section 1d, this section is not subject to the 579
referendum and goes into immediate effect when this act becomes 580
law. 581