

**As Reported by the Senate Ways and Means and Economic  
Development Committee**

**126th General Assembly  
Regular Session  
2005-2006**

**Sub. S. B. No. 26**

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

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**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 19  
return for the preceding month in such form as is prescribed by 20  
the tax commissioner and shall pay the tax shown on the return to 21  
be due. The return shall show the sum of the prices of taxable 22  
merchandise used and taxable services received, the amount of tax 23  
due from the permit holder, and such other information as the 24  
commissioner deems necessary. The commissioner, upon written 25  
request by the permit holder, may extend the time for making and 26  
filing returns and paying the tax. If the commissioner determines 27  
that a permit holder's tax liability is not such as to merit 28  
monthly filing, the commissioner may authorize the permit holder 29  
to file returns and pay the tax at less frequent intervals. The 30  
treasurer of state shall show on the return the date it was filed 31  
and the amount of the payment remitted to the treasurer. 32  
Thereafter, the treasurer immediately shall transmit all returns 33  
filed under this section to the tax commissioner. 34

Any permit holder required to file a return and pay the tax 35  
under this section whose total payment for any calendar year 36  
equals or exceeds the amount shown in section 5739.032 of the 37  
Revised Code shall make each payment required by this section in 38  
the second ensuing and each succeeding year by electronic funds 39  
transfer as prescribed by, and on or before the dates specified 40  
in, section 5739.032 of the Revised Code, except as otherwise 41  
prescribed by that section. 42

(C) For purposes of reporting and remitting the tax, the 43  
price of tangible personal property or services purchased by, or 44  
of tangible personal property produced by, the permit holder shall 45  
be determined under division (G) of section 5741.01 of the Revised 46  
Code. Except as otherwise provided in division ~~(C)~~(E) of section 47  
5739.033 of the Revised Code, the situs of any purchase 48  
transaction made by the permit holder is the location where the 49

tangible personal property or service is received by the permit holder. 50  
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(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  
division (C) of section 5739.031 or section 5739.034 of the  
Revised Code, or at the situs of the sale as determined under  
section 5739.035 of the Revised Code. This section applies only to  
a vendor's or seller's obligation to collect and remit sales taxes  
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the  
Revised Code or use taxes under section 5741.02, 5741.021,  
5741.022, or 5741.023 of the Revised Code. Division (A) of this  
section does not apply in determining the jurisdiction for which  
sellers are required to collect the use tax under section 5741.05  
of the Revised Code. This section does not affect the obligation  
of a consumer to remit use taxes on the storage, use, or other  
consumption of tangible personal property or on the benefit  
realized of any service provided, to the jurisdiction of that  
storage, use, or consumption, or benefit realized.

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

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

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

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

calendar year 2008.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Trucks and truck-tractors with a gross vehicle weight  
rating of greater than ten thousand pounds, trailers,  
semi-trailers, or passenger buses that are registered through the  
international registration plan and are operated under authority  
of a carrier authorized and certificated by the United States

department of transportation or another federal authority to 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 330  
(A)(3) of section 5739.02 of the Revised Code, the initial lease 331  
or rental installment shall be sourced pursuant to division ~~(A)~~(C) 332  
of this section. Each subsequent installment shall be sourced to 333  
the primary property location for the period covered by the 334  
installment. 335

(3) As used in division ~~(G)~~(I) of this section, "primary 336  
property location" means an address for tangible personal property 337  
provided by the lessee or renter that is available to the lessor 338  
or owner from its records maintained in the ordinary course of 339  
business, when use of that address does not constitute bad faith. 340

**Sec. 5739.034.** (A) As used in this section: 341

(1) "Air-to-ground radiotelephone service" means a radio 342  
service, as defined in 47 C.F.R. 22.99, in which common carriers 343  
are authorized to offer and provide radio telecommunications 344  
service for hire to subscribers in aircraft. 345

(2) "Call-by-call basis" means any method of charging for 346  
telecommunications services where the price is measured by 347  
individual calls. 348

(3) "Customer" means the person or entity that contracts with 349  
a seller of telecommunications service. If the end user of 350  
telecommunications service is not the contracting party, the end 351  
user of the telecommunications service is the customer of the 352  
telecommunications service. "Customer" does not include a reseller 353  
of telecommunications service or of mobile telecommunications 354  
service of a serving carrier under an agreement to serve the 355  
customer outside the home service provider's licensed service 356  
area. 357

(4) "End user" means the person who utilizes the 358  
telecommunications service. In the case of a person other than an 359  
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  
terminates, regardless of where the call is billed or paid. 389  
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(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.

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

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

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

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

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(B) A vendor who holds a license issued prior to July 1, 2005, under division (A) of section 5739.17 of the Revised Code

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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 514  
section. The compensation shall be calculated for each county each 515  
month of the six-month period, and shall equal the amount of the 516  
tax reported on the return for sales of tangible personal property 517  
delivered to each county in which the vendor does not have a fixed 518  
place of business and does not, or is not required to, hold a 519  
license issued under division (A) of section 5739.17 of the 520  
Revised Code for that business, not to exceed twenty-five dollars 521  
per county for each month. Only amounts paid by the vendor for 522  
which the vendor is eligible for a discount under division (B) of 523  
section 5739.12 of the Revised Code and that are shown on returns 524  
filed during that six-month period shall be considered in 525  
calculating the compensation. In no event shall a vendor receive 526  
compensation that exceeds its total cost of complying with the 527  
destination-based sourcing requirements. For purposes of the 528  
six-month compensation period, a partial month shall be considered 529  
a month. 530

(C) A vendor that applies for compensation under this section 531  
shall file an application with the tax commissioner on a form 532  
prescribed by the commissioner. The application shall be filed 533  
within sixty days after the last day of the last month of the 534  
six-month period for which the vendor is requesting compensation. 535  
The commissioner shall determine the amount of compensation to 536  
which the vendor is entitled, and if that amount is equal to or 537  
greater than the amount claimed on the application, the 538  
commissioner shall certify that amount to the director of budget 539  
and management and the treasurer of state for payment from the 540  
general revenue fund. If the commissioner determines that the 541

amount of compensation to which the vendor is entitled is less 542  
than the amount claimed on the vendor's application, the 543  
commissioner shall proceed in accordance with section 5703.70 of 544  
the Revised Code. 545

(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