

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 165

Representative Gibbs

Cosponsors: Representatives McGregor, J., Hagan, J., Adams, Carmichael

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A B I L L

To amend sections 5739.03, 5739.031, 5739.033, 1
5739.035, 5739.123, and 5741.02 and to enact 2
section 5741.09 of the Revised Code to require 3
vendors using origin-based situsing rules to 4
determine the appropriate sales tax jurisdiction 5
in which a sale is taxable to continue to do so, 6
to authorize vendors using destination-based 7
sourcing to convert to origin-based situsing at 8
their convenience, to repeal Ohio's multiple 9
points of use provisions for services and 10
computer-related sales, and to authorize the Tax 11
Commissioner to develop a plan for in-state and 12
out-of-state vendors to elect to collect and remit 13
Ohio use taxes at a uniform rate. 14

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

Section 1. That sections 5739.03, 5739.031, 5739.033, 15
5739.035, 5739.123, and 5741.02 be amended and section 5741.09 of 16
the Revised Code be enacted to read as follows: 17

Sec. 5739.03. (A) Except as provided in section 5739.05 of 18
the Revised Code, the tax imposed by or pursuant to section 19

5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall 20
be paid by the consumer to the vendor, and each vendor shall 21
collect from the consumer, as a trustee for the state of Ohio, the 22
full and exact amount of the tax payable on each taxable sale, in 23
the manner and at the times provided as follows: 24

(1) If the price is, at or prior to the provision of the 25
service or the delivery of possession of the thing sold to the 26
consumer, paid in currency passed from hand to hand by the 27
consumer or the consumer's agent to the vendor or the vendor's 28
agent, the vendor or the vendor's agent shall collect the tax with 29
and at the same time as the price; 30

(2) If the price is otherwise paid or to be paid, the vendor 31
or the vendor's agent shall, at or prior to the provision of the 32
service or the delivery of possession of the thing sold to the 33
consumer, charge the tax imposed by or pursuant to section 34
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to 35
the account of the consumer, which amount shall be collected by 36
the vendor from the consumer in addition to the price. Such sale 37
shall be reported on and the amount of the tax applicable thereto 38
shall be remitted with the return for the period in which the sale 39
is made, and the amount of the tax shall become a legal charge in 40
favor of the vendor and against the consumer. 41

(B)(1)(a) If any sale is claimed to be exempt under division 42
(E) of section 5739.01 of the Revised Code or under section 43
5739.02 of the Revised Code, with the exception of divisions 44
(B)(1) to (11) or (28) of section 5739.02 of the Revised Code, the 45
consumer must provide to the vendor, and the vendor must obtain 46
from the consumer, a certificate specifying the reason that the 47
sale is not legally subject to the tax. The certificate shall be 48
in such form, and shall be provided either in a hard copy form or 49
electronic form, as the tax commissioner prescribes. 50

(b) A vendor that obtains a fully completed exemption 51

certificate from a consumer is relieved of liability for 52
collecting and remitting tax on any sale covered by that 53
certificate. If it is determined the exemption was improperly 54
claimed, the consumer shall be liable for any tax due on that sale 55
under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 56
5741. of the Revised Code. Relief under this division from 57
liability does not apply to any of the following: 58

(i) A vendor that fraudulently fails to collect tax; 59

(ii) A vendor that solicits consumers to participate in the 60
unlawful claim of an exemption; 61

(iii) A vendor that accepts an exemption certificate from a 62
consumer that claims an exemption based on who purchases or who 63
sells property or a service, when the subject of the transaction 64
sought to be covered by the exemption certificate is actually 65
received by the consumer at a location operated by the vendor in 66
this state, and this state has posted to its web site an exemption 67
certificate form that clearly and affirmatively indicates that the 68
claimed exemption is not available in this state; 69

~~(iv) A vendor that accepts an exemption certificate from a 70
consumer who claims a multiple points of use exemption under 71
division (D) of section 5739.033 of the Revised Code, if the item 72
purchased is tangible personal property, other than prewritten 73
computer software. 74~~

(2) The vendor shall maintain records, including exemption 75
certificates, of all sales on which a consumer has claimed an 76
exemption, and provide them to the tax commissioner on request. 77

(3) The tax commissioner may establish an identification 78
system whereby the commissioner issues an identification number to 79
a consumer that is exempt from payment of the tax. The consumer 80
must present the number to the vendor, if any sale is claimed to 81
be exempt as provided in this section. 82

(4) If no certificate is provided or obtained within ninety 83
days after the date on which such sale is consummated, it shall be 84
presumed that the tax applies. Failure to have so provided or 85
obtained a certificate shall not preclude a vendor, within one 86
hundred twenty days after the tax commissioner gives written 87
notice of intent to levy an assessment, from either establishing 88
that the sale is not subject to the tax, or obtaining, in good 89
faith, a fully completed exemption certificate. 90

(5) Certificates need not be obtained nor provided where the 91
identity of the consumer is such that the transaction is never 92
subject to the tax imposed or where the item of tangible personal 93
property sold or the service provided is never subject to the tax 94
imposed, regardless of use, or when the sale is in interstate 95
commerce. 96

(6) If a transaction is claimed to be exempt under division 97
(B)(13) of section 5739.02 of the Revised Code, the contractor 98
shall obtain certification of the claimed exemption from the 99
contractee. This certification shall be in addition to an 100
exemption certificate provided by the contractor to the vendor. A 101
contractee that provides a certification under this division shall 102
be deemed to be the consumer of all items purchased by the 103
contractor under the claim of exemption, if it is subsequently 104
determined that the exemption is not properly claimed. The 105
certification shall be in such form as the tax commissioner 106
prescribes. 107

(C) As used in this division, "contractee" means a person who 108
seeks to enter or enters into a contract or agreement with a 109
contractor or vendor for the construction of real property or for 110
the sale and installation onto real property of tangible personal 111
property. 112

Any contractor or vendor may request from any contractee a 113
certification of what portion of the property to be transferred 114

under such contract or agreement is to be incorporated into the 115
realty and what portion will retain its status as tangible 116
personal property after installation is completed. The contractor 117
or vendor shall request the certification by certified mail 118
delivered to the contractee, return receipt requested. Upon 119
receipt of such request and prior to entering into the contract or 120
agreement, the contractee shall provide to the contractor or 121
vendor a certification sufficiently detailed to enable the 122
contractor or vendor to ascertain the resulting classification of 123
all materials purchased or fabricated by the contractor or vendor 124
and transferred to the contractee. This requirement applies to a 125
contractee regardless of whether the contractee holds a direct 126
payment permit under section 5739.031 of the Revised Code or 127
provides to the contractor or vendor an exemption certificate as 128
provided under this section. 129

For the purposes of the taxes levied by this chapter and 130
Chapter 5741. of the Revised Code, the contractor or vendor may in 131
good faith rely on the contractee's certification. Notwithstanding 132
division (B) of section 5739.01 of the Revised Code, if the tax 133
commissioner determines that certain property certified by the 134
contractee as tangible personal property pursuant to this division 135
is, in fact, real property, the contractee shall be considered to 136
be the consumer of all materials so incorporated into that real 137
property and shall be liable for the applicable tax, and the 138
contractor or vendor shall be excused from any liability on those 139
materials. 140

If a contractee fails to provide such certification upon the 141
request of the contractor or vendor, the contractor or vendor 142
shall comply with the provisions of this chapter and Chapter 5741. 143
of the Revised Code without the certification. If the tax 144
commissioner determines that such compliance has been performed in 145
good faith and that certain property treated as tangible personal 146

property by the contractor or vendor is, in fact, real property, 147
the contractee shall be considered to be the consumer of all 148
materials so incorporated into that real property and shall be 149
liable for the applicable tax, and the construction contractor or 150
vendor shall be excused from any liability on those materials. 151

This division does not apply to any contract or agreement 152
where the tax commissioner determines as a fact that a 153
certification under this division was made solely on the decision 154
or advice of the contractor or vendor. 155

(D) Notwithstanding division (B) of section 5739.01 of the 156
Revised Code, whenever the total rate of tax imposed under this 157
chapter is increased after the date after a construction contract 158
is entered into, the contractee shall reimburse the construction 159
contractor for any additional tax paid on tangible property 160
consumed or services received pursuant to the contract. 161

(E) A vendor who files a petition for reassessment contesting 162
the assessment of tax on sales for which the vendor obtained no 163
valid exemption certificates and for which the vendor failed to 164
establish that the sales were properly not subject to the tax 165
during the one-hundred-twenty-day period allowed under division 166
(B) of this section, may present to the tax commissioner 167
additional evidence to prove that the sales were properly subject 168
to a claim of exception or exemption. The vendor shall file such 169
evidence within ninety days of the receipt by the vendor of the 170
notice of assessment, except that, upon application and for 171
reasonable cause, the period for submitting such evidence shall be 172
extended thirty days. 173

The commissioner shall consider such additional evidence in 174
reaching the final determination on the assessment and petition 175
for reassessment. 176

(F) Whenever a vendor refunds to the consumer the full price 177

of an item of tangible personal property on which the tax imposed 178
under this chapter has been paid, the vendor shall also refund the 179
full amount of the tax paid. 180

Sec. 5739.031. (A) Upon application, the tax commissioner may 181
issue a direct payment permit that authorizes a consumer to pay 182
the sales tax levied by or pursuant to section 5739.02, 5739.021, 183
5739.023, or 5739.026 of the Revised Code or the use tax levied by 184
or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of 185
the Revised Code directly to the state and waives the collection 186
of the tax by the vendor or seller if payment directly to the 187
state would improve compliance and increase the efficiency of the 188
administration of the tax. The commissioner may adopt rules 189
establishing the criteria for the issuance of such permits. 190

(B) Each permit holder, on or before the twenty-third day of 191
each month, shall make and file with the treasurer of state a 192
return for the preceding month in such form as is prescribed by 193
the tax commissioner and shall pay the tax shown on the return to 194
be due. The return shall show the sum of the prices of taxable 195
merchandise used and taxable services received, the amount of tax 196
due from the permit holder, and such other information as the 197
commissioner deems necessary. The commissioner, upon written 198
request by the permit holder, may extend the time for making and 199
filing returns and paying the tax. If the commissioner determines 200
that a permit holder's tax liability is not such as to merit 201
monthly filing, the commissioner may authorize the permit holder 202
to file returns and pay the tax at less frequent intervals. The 203
treasurer of state shall show on the return the date it was filed 204
and the amount of the payment remitted to the treasurer. 205
Thereafter, the treasurer immediately shall transmit all returns 206
filed under this section to the tax commissioner. 207

Any permit holder required to file a return and pay the tax 208

under this section whose total payment for any calendar year 209
equals or exceeds the amount shown in section 5739.032 of the 210
Revised Code shall make each payment required by this section in 211
the second ensuing and each succeeding year by electronic funds 212
transfer as prescribed by, and on or before the dates specified 213
in, section 5739.032 of the Revised Code, except as otherwise 214
prescribed by that section. 215

(C) For purposes of reporting and remitting the tax, the 216
price of tangible personal property or services purchased by, or 217
of tangible personal property produced by, the permit holder shall 218
be determined under division (G) of section 5741.01 of the Revised 219
Code. ~~Except as otherwise provided in division (E) of section~~ 220
~~5739.033 of the Revised Code, the~~ The situs of any purchase 221
transaction made by the permit holder is the location where the 222
tangible personal property or service is received by the permit 223
holder. 224

(D) It shall be the duty of every permit holder required to 225
make a return and pay its tax under this section to keep and 226
preserve suitable records of purchases together with invoices of 227
purchases, bills of lading, asset ledgers, depreciation schedules, 228
transfer journals, and such other primary and secondary records 229
and documents in such form as the commissioner requires. All such 230
records and other documents shall be open during business hours to 231
the inspection of the tax commissioner, and shall be preserved for 232
a period of four years, unless the commissioner, in writing, has 233
authorized their destruction or disposal at an earlier date, or by 234
order or by reason of a waiver of the four-year time limitation 235
pursuant to section 5739.16 of the Revised Code requires that they 236
be kept longer. 237

(E) A permit granted pursuant to this section shall continue 238
to be valid until surrendered by the holder or canceled for cause 239
by the tax commissioner. 240

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

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

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

services are made of the cancellation or surrender of a direct 273
payment permit shall be considered as a refusal to pay the tax by 274
the person required to issue such notice. 275

Sec. 5739.033. (A) ~~Except as provided in division (B) of this 276~~
~~section, divisions (C) to (I) of this section apply to sales made 277~~
~~on and after May 1, 2006. Sales made before May 1, 2006, are 278~~
~~subject to section 5739.035 of the Revised Code. On and after 279~~
~~January 1, 2005, any vendor may irrevocably elect to comply with 280~~
~~divisions (C) to (I) of this section for all of the vendor's sales 281~~
~~and places of business in this state. 282~~

~~The~~ The amount of tax due pursuant to sections 5739.02, 283
5739.021, 5739.023, and 5739.026 of the Revised Code is the sum of 284
the taxes imposed pursuant to those sections at the sourcing 285
location of the sale as determined under this section or, if 286
applicable, under division (C) of section 5739.031 or section 287
5739.034 of the Revised Code, or at the situs of the sale as 288
determined under section 5739.035 of the Revised Code. This 289
section applies only to a vendor's or seller's obligation to 290
collect and remit sales taxes under section 5739.02, 5739.021, 291
5739.023, or 5739.026 of the Revised Code or use taxes under 292
section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised 293
Code. ~~Division~~ Divisions (A) and (B) of this section ~~does~~ do not 294
apply in determining the jurisdiction for which sellers are 295
required to collect the use tax under section 5741.05 of the 296
Revised Code. This section does not affect the obligation of a 297
consumer to remit use taxes on the storage, use, or other 298
consumption of tangible personal property or on the benefit 299
realized of any service provided, to the jurisdiction of that 300
storage, use, or consumption, or benefit realized. 301

(B)(1) ~~As used in this division:~~ 302

~~(a) "Delivery sale" means the taxable sale of tangible 303~~

~~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.~~

~~(b) "Agreement" has the same meaning as in section 5740.01 of
the Revised Code.~~

~~(c) "Governing board" has the same meaning as in section
5740.02 of the Revised Code.~~

~~(2)(a) A vendor with total delivery sales in calendar year
2005 that are less than thirty million dollars may continue to
situate its sales under section 5739.035 of the Revised Code from
May 1, 2006, through April 30, 2007, except that, if the tax
commissioner does not enter a determination in the commissioner's
journal under division (B)(2)(b) of this section, those dates
shall be May 1, 2006, through December 31, 2007.~~

~~(b) On or before February 1, 2007, the tax commissioner shall
determine whether certified service provider services are being
provided by the governing board of the streamlined sales and use
tax agreement for all delivery sales. If the commissioner
determines that such services are being so provided, the
commissioner shall enter the determination in the commissioner's
journal and shall provide notice of the determination on the
department of taxation's official internet web site. If the
commissioner makes such an entry in the journal, then a vendor
with total delivery sales in calendar year 2006 that are less than
five million dollars may continue to situate its sales under section
5739.035 of the Revised Code from May 1, 2007, through December
31, 2007.~~

~~(3) Beginning January 1, 2008, all vendors shall source their
sales under divisions (C) to (I) of this section.~~

~~(4) Once a vendor has total delivery sales that exceed the~~

~~dollar amount in division (B)(2)(a) or (b) of this section, the~~ 335
~~vendor shall source its sales under divisions (C) to (I) of this~~ 336
~~section and shall continue to source its sales under those~~ 337
~~divisions, regardless of the amount of the vendor's total delivery~~ 338
~~sales in future years~~ A vendor that situses its sales under 339
section 5739.035 of the Revised Code on the effective date of the 340
amendment of this section by _____ of the 127th general assembly 341
shall continue to situs its sales under that section. 342

(2) A vendor that sources its sales under divisions (C) to 343
(G) of this section on the effective date of the amendment of this 344
section by _____ of the 127th general assembly may elect to situs 345
its sales under section 5739.035 of the Revised Code in lieu of 346
sourcing its sales under divisions (C) to (G) of this section. The 347
tax commissioner shall prescribe forms and procedures by which 348
vendors shall make the election. 349

(C) Except for sales, other than leases, of titled motor 350
vehicles, titled watercraft, or titled outboard motors as provided 351
in section 5741.05 of the Revised Code, or as otherwise provided 352
in this section and section 5739.034 of the Revised Code, all 353
sales shall be sourced as follows: 354

(1) If the consumer or a donee designated by the consumer 355
receives tangible personal property or a service at a vendor's 356
place of business, the sale shall be sourced to that place of 357
business. 358

(2) When the tangible personal property or service is not 359
received at a vendor's place of business, the sale shall be 360
sourced to the location known to the vendor where the consumer or 361
the donee designated by the consumer receives the tangible 362
personal property or service, including the location indicated by 363
instructions for delivery to the consumer or the consumer's donee. 364

(3) If divisions (C)(1) and (2) of this section do not apply, 365

the sale shall be sourced to the location indicated by an address 366
for the consumer that is available from the vendor's business 367
records that are maintained in the ordinary course of the vendor's 368
business, when use of that address does not constitute bad faith. 369
370

(4) If divisions (C)(1), (2), and (3) of this section do not 371
apply, the sale shall be sourced to the location indicated by an 372
address for the consumer obtained during the consummation of the 373
sale, including the address associated with the consumer's payment 374
instrument, if no other address is available, when use of that 375
address does not constitute bad faith. 376

(5) If divisions (C)(1), (2), (3), and (4) of this section do 377
not apply, including in the circumstance where the vendor is 378
without sufficient information to apply any of those divisions, 379
the sale shall be sourced to the address from which tangible 380
personal property was shipped, or from which the service was 381
provided, disregarding any location that merely provided the 382
electronic transfer of the property sold or service provided. 383

(6) As used in division (C) of this section, "receive" means 384
taking possession of tangible personal property or making first 385
use of a service. "Receive" does not include possession by a 386
shipping company on behalf of a consumer. 387

~~(D)(1)(a) Notwithstanding divisions (C)(1) to (5) of this 388
section, a business consumer that is not a holder of a direct 389
payment permit granted under section 5739.031 of the Revised Code, 390
that purchases a digital good, computer software, except computer 391
software received in person by a business consumer at a vendor's 392
place of business, or a service, and that knows at the time of 393
purchase that such digital good, software, or service will be 394
concurrently available for use in more than one taxing 395
jurisdiction shall deliver to the vendor in conjunction with its 396
purchase an exemption certificate claiming multiple points of use, 397~~

~~or shall meet the requirements of division (D)(2) of this section. 398
On receipt of the exemption certificate claiming multiple points 399
of use, the vendor is relieved of its obligation to collect, pay, 400
or remit the tax due, and the business consumer must pay the tax 401
directly to the state. 402~~

~~(b) A business consumer that delivers the exemption 403
certificate claiming multiple points of use to a vendor may use 404
any reasonable, consistent, and uniform method of apportioning the 405
tax due on the digital good, computer software, or service that is 406
supported by the consumer's business records as they existed at 407
the time of the sale. The business consumer shall report and pay 408
the appropriate tax to each jurisdiction where concurrent use 409
occurs. The tax due shall be calculated as if the apportioned 410
amount of the digital good, computer software, or service had been 411
delivered to each jurisdiction to which the sale is apportioned 412
under this division. 413~~

~~(c) The exemption certificate claiming multiple points of use 414
shall remain in effect for all future sales by the vendor to the 415
business consumer until it is revoked in writing by the business 416
consumer, except as to the business consumer's specific 417
apportionment of a subsequent sale under division (D)(1)(b) of 418
this section and the facts existing at the time of the sale. 419~~

~~(2) When the vendor knows that a digital good, computer 420
software, or service sold will be concurrently available for use 421
by the business consumer in more than one jurisdiction, but the 422
business consumer does not provide an exemption certificate 423
claiming multiple points of use as required by division (D)(1) of 424
this section, the vendor may work with the business consumer to 425
produce the correct apportionment. Governed by the principles of 426
division (D)(1)(b) of this section, the vendor and business 427
consumer may use any reasonable, but consistent and uniform, 428
method of apportionment that is supported by the vendor's and 429~~

~~business consumer's books and records as they exist at the time 430
the sale is reported for purposes of the taxes levied under this 431
chapter. If the business consumer certifies to the accuracy of the 432
apportionment and the vendor accepts the certification, the vendor 433
shall collect and remit the tax accordingly. In the absence of bad 434
faith, the vendor is relieved of any further obligation to collect 435
tax on any transaction where the vendor has collected tax pursuant 436
to the information certified by the business consumer. 437~~

~~(3) When the vendor knows that the digital good, computer 438
software, or service will be concurrently available for use in 439
more than one jurisdiction, and the business consumer does not 440
have a direct pay permit and does not provide to the vendor an 441
exemption certificate claiming multiple points of use as required 442
in division (D)(1) of this section, or certification pursuant to 443
division (D)(2) of this section, the vendor shall collect and 444
remit the tax based on division (C) of this section. 445~~

~~(4) Nothing in this section shall limit a person's obligation 446
for sales or use tax to any state in which a digital good, 447
computer software, or service is concurrently available for use, 448
nor limit a person's ability under local, state, or federal law, 449
to claim a credit for sales or use taxes legally due and paid to 450
other jurisdictions. 451~~

~~(E) A person who holds a direct payment permit issued under 452
section 5739.031 of the Revised Code is not required to deliver an 453
exemption certificate claiming multiple points of use to a vendor. 454
But such permit holder shall comply with division (D)(2) of this 455
section in apportioning the tax due on a digital good, computer 456
software, or a service for use in business that will be 457
concurrently available for use in more than one taxing 458
jurisdiction. 459~~

~~(F)(1) Notwithstanding divisions (C)(1) to (5) of this 460
section, the consumer of direct mail that is not a holder of a 461~~

direct payment permit shall provide to the vendor in conjunction 462
with the sale either an exemption certificate claiming direct mail 463
prescribed by the tax commissioner, or information to show the 464
jurisdictions to which the direct mail is delivered to recipients. 465

(2) Upon receipt of such exemption certificate, the vendor is 466
relieved of all obligations to collect, pay, or remit the 467
applicable tax and the consumer is obligated to pay that tax on a 468
direct pay basis. An exemption certificate claiming direct mail 469
shall remain in effect for all future sales of direct mail by the 470
vendor to the consumer until it is revoked in writing. 471

(3) Upon receipt of information from the consumer showing the 472
jurisdictions to which the direct mail is delivered to recipients, 473
the vendor shall collect the tax according to the delivery 474
information provided by the consumer. In the absence of bad faith, 475
the vendor is relieved of any further obligation to collect tax on 476
any transaction where the vendor has collected tax pursuant to the 477
delivery information provided by the consumer. 478

(4) If the consumer of direct mail does not have a direct 479
payment permit and does not provide the vendor with either an 480
exemption certificate claiming direct mail or delivery information 481
as required by division ~~(F)~~(D)(1) of this section, the vendor 482
shall collect the tax according to division (C)(5) of this 483
section. Nothing in division ~~(F)~~(D)(4) of this section shall limit 484
a consumer's obligation to pay sales or use tax to any state to 485
which the direct mail is delivered. 486

(5) If a consumer of direct mail provides the vendor with 487
documentation of direct payment authority, the consumer shall not 488
be required to provide an exemption certificate claiming direct 489
mail or delivery information to the vendor. 490

~~(G)~~(E) If the vendor provides lodging to transient guests as 491
specified in division (B)(2) of section 5739.01 of the Revised 492

Code, the sale shall be sourced to the location where the lodging
is located. 493
494

~~(H)~~(F)(1) As used in this division and division ~~(I)~~(G) of 495
this section, "transportation equipment" means any of the 496
following: 497

(a) Locomotives and railcars that are utilized for the 498
carriage of persons or property in interstate commerce. 499

(b) Trucks and truck-tractors with a gross vehicle weight 500
rating of greater than ten thousand pounds, trailers, 501
semi-trailers, or passenger buses that are registered through the 502
international registration plan and are operated under authority 503
of a carrier authorized and certificated by the United States 504
department of transportation or another federal authority to 505
engage in the carriage of persons or property in interstate 506
commerce. 507

(c) Aircraft that are operated by air carriers authorized and 508
certificated by the United States department of transportation or 509
another federal authority to engage in the carriage of persons or 510
property in interstate or foreign commerce. 511

(d) Containers designed for use on and component parts 512
attached to or secured on the items set forth in division 513
~~(H)~~(F)(1)(a), (b), or (c) of this section. 514

(2) A sale, lease, or rental of transportation equipment 515
shall be sourced pursuant to division (C) of this section. 516

~~(I)~~(G)(1) A lease or rental of tangible personal property 517
that does not require recurring periodic payments shall be sourced 518
pursuant to division (C) of this section. 519

(2) A lease or rental of tangible personal property that 520
requires recurring periodic payments shall be sourced as follows: 521

(a) In the case of a motor vehicle, other than a motor 522

vehicle that is transportation equipment, or an aircraft, other 523
than an aircraft that is transportation equipment, such lease or 524
rental shall be sourced as follows: 525

(i) An accelerated tax payment on a lease or rental taxed 526
pursuant to division (A)(2) of section 5739.02 of the Revised Code 527
shall be sourced to the primary property location at the time the 528
lease or rental is consummated. Any subsequent taxable charges on 529
the lease or rental shall be sourced to the primary property 530
location for the period in which the charges are incurred. 531

(ii) For a lease or rental taxed pursuant to division (A)(3) 532
of section 5739.02 of the Revised Code, each lease or rental 533
installment shall be sourced to the primary property location for 534
the period covered by the installment. 535

(b) In the case of a lease or rental of all other tangible 536
personal property, other than transportation equipment, such lease 537
or rental shall be sourced as follows: 538

(i) An accelerated tax payment on a lease or rental that is 539
taxed pursuant to division (A)(2) of section 5739.02 of the 540
Revised Code shall be sourced pursuant to division (C) of this 541
section at the time the lease or rental is consummated. Any 542
subsequent taxable charges on the lease or rental shall be sourced 543
to the primary property location for the period in which the 544
charges are incurred. 545

(ii) For a lease or rental that is taxed pursuant to division 546
(A)(3) of section 5739.02 of the Revised Code, the initial lease 547
or rental installment shall be sourced pursuant to division (C) of 548
this section. Each subsequent installment shall be sourced to the 549
primary property location for the period covered by the 550
installment. 551

(3) As used in division ~~(F)~~(G) of this section, "primary 552
property location" means an address for tangible personal property 553

provided by the lessee or renter that is available to the lessor 554
or owner from its records maintained in the ordinary course of 555
business, when use of that address does not constitute bad faith. 556

Sec. 5739.035. This section ~~only~~ applies to sales ~~that are~~ 557
~~required to be sitused under this section pursuant to division (A)~~ 558
~~or (B) of section 5739.033 of the Revised Code by a vendor~~ 559
required to situs its sales under this section by division (B)(1) 560
of section 5739.033 of the Revised Code or that elects to situs 561
its sales under this section pursuant to division (B)(2) of that 562
section. 563

(A) Except as otherwise provided in this section, the situs 564
of all sales is the vendor's place of business. 565

(1) If the consumer or the consumer's agent takes possession 566
of the tangible personal property at a place of business of the 567
vendor where the purchase contract or agreement was made, the 568
situs of the sale is that place of business. 569

(2) If the consumer or the consumer's agent takes possession 570
of the tangible personal property other than at a place of 571
business of the vendor, or takes possession at a warehouse or 572
similar facility of the vendor, the situs of the sale is the 573
vendor's place of business where the purchase contract or 574
agreement was made or the purchase order was received. 575

(3) If the vendor provides a service specified in division 576
(B)(3)(a), (b), (c), (d), (n), (o), (q), (r), or (s) of section 577
5739.01 or makes a sale specified in division (B)(8) of section 578
5739.01 of the Revised Code, the situs of the sale is the vendor's 579
place of business where the service is performed or the contract 580
or agreement for the service was made or the purchase order was 581
received. 582

(B) If the vendor is a transient vendor as specified in 583

division (B) of section 5739.17 of the Revised Code, the situs of 584
the sale is the vendor's temporary place of business or, if the 585
transient vendor is the lessor of titled motor vehicles, titled 586
watercraft, or titled outboard motors, at the location where the 587
lessee keeps the leased property. 588

(C) If the vendor makes sales of tangible personal property 589
from a stock of goods carried in a motor vehicle, from which the 590
purchaser makes selection and takes possession, or from which the 591
vendor sells tangible personal property the quantity of which has 592
not been determined prior to the time the purchaser takes 593
possession, the situs of the sale is the location of the motor 594
vehicle when the sale is made. 595

(D) If the vendor is a delivery vendor as specified in 596
division (D) of section 5739.17 of the Revised Code, the situs of 597
the sale is the place where the tangible personal property is 598
delivered, where the leased property is used, or where the service 599
is performed or received. 600

(E) If the vendor provides a service specified in division 601
(B)(3)(e), (g), (h), (j), (k), (l), (m), (p), or (t) of section 602
5739.01 of the Revised Code, the situs of the sale is the location 603
of the consumer where the service is performed or received. 604

(F) If the vendor provides lodging to transient guests as 605
specified in division (B)(2) of section 5739.01 of the Revised 606
Code, the situs of the sale is the location where the lodging is 607
located. 608

(G) If the vendor sells a warranty, maintenance or service 609
contract, or similar agreement as specified in division (B)(7) of 610
section 5739.01 of the Revised Code and the vendor is a delivery 611
vendor, the situs of the sale is the location of the consumer. If 612
the vendor is not a delivery vendor, the situs of the sale is the 613
vendor's place of business where the contract or agreement was 614

made, unless the warranty or contract is a component of the sale 615
of a titled motor vehicle, titled watercraft, or titled outboard 616
motor, in which case the situs of the sale is the county of 617
titling. 618

(H) Except as otherwise provided in this division, if the 619
vendor sells a prepaid authorization number or a prepaid telephone 620
calling card, the situs of the sale is the vendor's place of 621
business and shall be taxed at the time of sale. If the vendor 622
sells a prepaid authorization number or prepaid telephone calling 623
card through a telephone call, electronic commerce, or any other 624
form of remote commerce, the situs of the sale is the consumer's 625
shipping address, or, if there is no item shipped, at the 626
consumer's billing address. 627

Sec. 5739.123. (A) As used in this section, 628
"destination-based sourcing requirements" means the manner in 629
which sales are required to be sourced under divisions (C) to 630
(~~I~~)(G) of section 5739.033 of the Revised Code. 631

(B) A vendor who is subject to the destination-based sourcing 632
requirements on the effective date of the amendment of this 633
section by _____ of the 127th general assembly and who holds a 634
license issued prior to May 1, 2006, under division (A) of section 635
5739.17 of the Revised Code may apply for temporary compensation 636
to assist the vendor in complying with the destination-based 637
sourcing requirements for the first six months those sourcing 638
requirements become applicable to the vendor under section 639
5739.033 of the Revised Code. The vendor shall file the 640
application in accordance with division (C) of this section. The 641
compensation shall be the actual amount of tax collected per 642
county for each month of the six-month period, not to exceed 643
twenty-five dollars per county per month, for sales of tangible 644
personal property delivered to each county in which the vendor 645

does not have a fixed place of business and does not, or is not 646
required to, hold a license issued under division (A) of section 647
5739.17 of the Revised Code for that business. Only amounts paid 648
by the vendor for which the vendor is eligible for a discount 649
under division (B) of section 5739.12 of the Revised Code and that 650
are shown on returns filed during that six-month period shall be 651
considered in calculating the compensation. In no event shall a 652
vendor receive compensation that exceeds its total cost of 653
complying with the destination-based sourcing requirements. For 654
purposes of the six-month compensation period, a partial month 655
shall be considered a month. 656

(C) A vendor that applies for compensation under this section 657
shall file an application with the tax commissioner on a form 658
prescribed by the commissioner. The application shall be filed 659
within sixty days after the end of the reporting period that 660
includes the last day of the last month of the six-month period 661
for which the vendor is requesting compensation. The commissioner 662
shall determine the amount of compensation to which the vendor is 663
entitled, and if that amount is equal to or greater than the 664
amount claimed on the application, the commissioner shall certify 665
that amount to the director of budget and management and the 666
treasurer of state for payment from the general revenue fund. If 667
the commissioner determines that the amount of compensation to 668
which the vendor is entitled is less than the amount claimed on 669
the vendor's application, the commissioner shall proceed in 670
accordance with section 5703.70 of the Revised Code. 671

(D) The compensation provided under this section shall not 672
reduce the amount required to be returned to counties and transit 673
authorities under section 5739.21 of the Revised Code. 674

Sec. 5741.02. (A)(1) For the use of the general revenue fund 675
of the state, an excise tax is hereby levied on the storage, use, 676

or other consumption in this state of tangible personal property 677
or the benefit realized in this state of any service provided. The 678
tax shall be collected as provided in section 5739.025 of the 679
Revised Code, provided that on and after July 1, 2003, and on or 680
before June 30, 2005, the rate of the tax shall be six per cent. 681
On and after July 1, 2005, the rate of the tax shall be five and 682
one-half per cent. 683

(2) In the case of the lease or rental, with a fixed term of 684
more than thirty days or an indefinite term with a minimum period 685
of more than thirty days, of any motor vehicles designed by the 686
manufacturer to carry a load of not more than one ton, watercraft, 687
outboard motor, or aircraft, or of any tangible personal property, 688
other than motor vehicles designed by the manufacturer to carry a 689
load of more than one ton, to be used by the lessee or renter 690
primarily for business purposes, the tax shall be collected by the 691
seller at the time the lease or rental is consummated and shall be 692
calculated by the seller on the basis of the total amount to be 693
paid by the lessee or renter under the lease or rental agreement. 694
If the total amount of the consideration for the lease or rental 695
includes amounts that are not calculated at the time the lease or 696
rental is executed, the tax shall be calculated and collected by 697
the seller at the time such amounts are billed to the lessee or 698
renter. In the case of an open-end lease or rental, the tax shall 699
be calculated by the seller on the basis of the total amount to be 700
paid during the initial fixed term of the lease or rental, and for 701
each subsequent renewal period as it comes due. As used in this 702
division, "motor vehicle" has the same meaning as in section 703
4501.01 of the Revised Code, and "watercraft" includes an outdrive 704
unit attached to the watercraft. 705

(3) Except as provided in division (A)(2) of this section, in 706
the case of a transaction, the price of which consists in whole or 707
part of the lease or rental of tangible personal property, the tax 708

shall be measured by the installments of those leases or rentals. 709

(B) Each consumer, storing, using, or otherwise consuming in 710
this state tangible personal property or realizing in this state 711
the benefit of any service provided, shall be liable for the tax, 712
and such liability shall not be extinguished until the tax has 713
been paid to this state; provided, that the consumer shall be 714
relieved from further liability for the tax if the tax has been 715
paid to a seller in accordance with section 5741.04 of the Revised 716
Code or prepaid by the seller in accordance with section 5741.06 717
of the Revised Code. 718

(C) The tax does not apply to the storage, use, or 719
consumption in this state of the following described tangible 720
personal property or services, nor to the storage, use, or 721
consumption or benefit in this state of tangible personal property 722
or services purchased under the following described circumstances: 723

(1) When the sale of property or service in this state is 724
subject to the excise tax imposed by sections 5739.01 to 5739.31 725
of the Revised Code, provided said tax has been paid; 726

(2) Except as provided in division (D) of this section, 727
tangible personal property or services, the acquisition of which, 728
if made in Ohio, would be a sale not subject to the tax imposed by 729
sections 5739.01 to 5739.31 of the Revised Code; 730

(3) Property or services, the storage, use, or other 731
consumption of or benefit from which this state is prohibited from 732
taxing by the Constitution of the United States, laws of the 733
United States, or the Constitution of this state. This exemption 734
shall not exempt from the application of the tax imposed by this 735
section the storage, use, or consumption of tangible personal 736
property that was purchased in interstate commerce, but that has 737
come to rest in this state, provided that fuel to be used or 738
transported in carrying on interstate commerce that is stopped 739

within this state pending transfer from one conveyance to another 740
is exempt from the excise tax imposed by this section and section 741
5739.02 of the Revised Code; 742

(4) Transient use of tangible personal property in this state 743
by a nonresident tourist or vacationer, or a nonbusiness use 744
within this state by a nonresident of this state, if the property 745
so used was purchased outside this state for use outside this 746
state and is not required to be registered or licensed under the 747
laws of this state; 748

(5) Tangible personal property or services rendered, upon 749
which taxes have been paid to another jurisdiction to the extent 750
of the amount of the tax paid to such other jurisdiction. Where 751
the amount of the tax imposed by this section and imposed pursuant 752
to section 5741.021, 5741.022, or 5741.023 of the Revised Code 753
exceeds the amount paid to another jurisdiction, the difference 754
shall be allocated between the tax imposed by this section and any 755
tax imposed by a county or a transit authority pursuant to section 756
5741.021, 5741.022, or 5741.023 of the Revised Code, in proportion 757
to the respective rates of such taxes. 758

As used in this subdivision, "taxes paid to another 759
jurisdiction" means the total amount of retail sales or use tax or 760
similar tax based upon the sale, purchase, or use of tangible 761
personal property or services rendered legally, levied by and paid 762
to another state or political subdivision thereof, or to the 763
District of Columbia, where the payment of such tax does not 764
entitle the taxpayer to any refund or credit for such payment. 765

(6) The transfer of a used manufactured home or used mobile 766
home, as defined by section 5739.0210 of the Revised Code, made on 767
or after January 1, 2000; 768

(7) Drugs that are or are intended to be distributed free of 769
charge to a practitioner licensed to prescribe, dispense, and 770

administer drugs to a human being in the course of a professional 771
practice and that by law may be dispensed only by or upon the 772
order of such a practitioner. 773

(8) Computer equipment and related software leased from a 774
lessor located outside this state and initially received in this 775
state on behalf of the consumer by a third party that will retain 776
possession of such property for not more than ninety days and that 777
will, within that ninety-day period, deliver such property to the 778
consumer at a location outside this state. Division (C)(8) of this 779
section does not provide exemption from taxation for any otherwise 780
taxable charges associated with such property while it is in this 781
state or for any subsequent storage, use, or consumption of such 782
property in this state by or on behalf of the consumer. 783

(9) Cigarettes that have a wholesale value of three hundred 784
dollars or less used, stored, or consumed, but not for resale, in 785
any month. 786

(10) Tangible personal property held for sale by a person but 787
not for that person's own use and donated by that person, without 788
charge or other compensation, to either of the following: 789

(a) A nonprofit organization operated exclusively for 790
charitable purposes in this state, no part of the net income of 791
which inures to the benefit of any private shareholder or 792
individual and no substantial part of the activities of which 793
consists of carrying on propaganda or otherwise attempting to 794
influence legislation; or 795

(b) This state or any political subdivision of this state, 796
but only if donated for exclusively public purposes. 797

For the purposes of division (C)(10) of this section, 798
"charitable purposes" has the same meaning as in division (B)(12) 799
of section 5739.02 of the Revised Code. 800

(D) The tax applies to the storage, use, or other consumption 801

in this state of tangible personal property or services, the 802
acquisition of which at the time of sale was excepted under 803
division (E) of section 5739.01 of the Revised Code from the tax 804
imposed by section 5739.02 of the Revised Code, but which has 805
subsequently been temporarily or permanently stored, used, or 806
otherwise consumed in a taxable manner. 807

(E)(1)(a) If any transaction is claimed to be exempt under 808
division (E) of section 5739.01 of the Revised Code or under 809
section 5739.02 of the Revised Code, with the exception of 810
divisions (B)(1) to (11) or (28) of section 5739.02 of the Revised 811
Code, the consumer shall provide to the seller, and the seller 812
shall obtain from the consumer, a certificate specifying the 813
reason that the transaction is not subject to the tax. The 814
certificate shall be in such form, and shall be provided either in 815
a hard copy form or electronic form, as the tax commissioner 816
prescribes. 817

(b) A seller that obtains a fully completed exemption 818
certificate from a consumer is relieved of liability for 819
collecting and remitting tax on any sale covered by that 820
certificate. If it is determined the exemption was improperly 821
claimed, the consumer shall be liable for any tax due on that sale 822
under this chapter. Relief under this division from liability does 823
not apply to any of the following: 824

(i) A seller that fraudulently fails to collect tax; 825

(ii) A seller that solicits consumers to participate in the 826
unlawful claim of an exemption; 827

(iii) A seller that accepts an exemption certificate from a 828
consumer that claims an exemption based on who purchases or who 829
sells property or a service, when the subject of the transaction 830
sought to be covered by the exemption certificate is actually 831
received by the consumer at a location operated by the seller in 832

this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state; 833
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~~(iv) A seller that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software. 836
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(2) The seller shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request. 841
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(3) If no certificate is provided or obtained within ninety days after the date on which the transaction is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a seller, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the transaction is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate. 844
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(4) If a transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the seller. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax commissioner prescribes. 852
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(F) A seller who files a petition for reassessment contesting 863

the assessment of tax on transactions for which the seller 864
obtained no valid exemption certificates, and for which the seller 865
failed to establish that the transactions were not subject to the 866
tax during the one-hundred-twenty-day period allowed under 867
division (E) of this section, may present to the tax commissioner 868
additional evidence to prove that the transactions were exempt. 869
The seller shall file such evidence within ninety days of the 870
receipt by the seller of the notice of assessment, except that, 871
upon application and for reasonable cause, the tax commissioner 872
may extend the period for submitting such evidence thirty days. 873

(G) For the purpose of the proper administration of sections 874
5741.01 to 5741.22 of the Revised Code, and to prevent the evasion 875
of the tax hereby levied, it shall be presumed that any use, 876
storage, or other consumption of tangible personal property in 877
this state is subject to the tax until the contrary is 878
established. 879

(H) The tax collected by the seller from the consumer under 880
this chapter is not part of the price, but is a tax collection for 881
the benefit of the state, and of counties levying an additional 882
use tax pursuant to section 5741.021 or 5741.023 of the Revised 883
Code and of transit authorities levying an additional use tax 884
pursuant to section 5741.022 of the Revised Code. Except for the 885
discount authorized under section 5741.12 of the Revised Code and 886
the effects of any rounding pursuant to section 5703.055 of the 887
Revised Code, no person other than the state or such a county or 888
transit authority shall derive any benefit from the collection of 889
such tax. 890

Sec. 5741.09. The tax commissioner shall develop a plan that 891
would permit vendors licensed under section 5739.17 of the Revised 892
Code and sellers registered under section 5741.17 of the Revised 893
Code to elect to collect and remit taxes levied under Chapters 894

5739. and 5741. of the Revised Code at a uniform rate and would 895
address how revenues relating to any tax levied in excess of the 896
tax levied under section 5739.02 or 5741.02 of the Revised Code 897
would be distributed among counties and transit authorities 898
levying a tax under Chapters 5739. and 5741. of the Revised Code. 899

Not later than January 31, 2008, the commissioner shall 900
submit the plan to the general assembly. 901

Section 2. That existing sections 5739.03, 5739.031, 902
5739.033, 5739.035, 5739.123, and 5741.02 of the Revised Code are 903
hereby repealed. 904

Section 3. Section 5739.035 of the Revised Code is presented 905
in this act as a composite of the section as amended by both Am. 906
Sub. H.B. 66 and Am. Sub. S.B. 26 of the 126th General Assembly. 907
The General Assembly, applying the principle stated in division 908
(B) of section 1.52 of the Revised Code that amendments are to be 909
harmonized if reasonably capable of simultaneous operation, finds 910
that the composite is the resulting version of the section in 911
effect prior to the effective date of the section as presented in 912
this act. 913

Section 4. Section 5741.02 of the Revised Code is presented 914
in this act as a composite of the section as amended by both Sub. 915
H.B. 294 and Am. Sub. S.B. 269 of the 126th General Assembly. The 916
General Assembly, applying the principle stated in division (B) of 917
section 1.52 of the Revised Code that amendments are to be 918
harmonized if reasonably capable of simultaneous operation, finds 919
that the composite is the resulting version of the section in 920
effect prior to the effective date of the section as presented in 921
this act. 922