

**As Reported by the House Ways and Means Committee**

**127th General Assembly**

**Regular Session**

**2007-2008**

**Sub. H. B. No. 165**

**Representative Gibbs**

**Cosponsors: Representatives McGregor, J., Hagan, J., Adams, Carmichael,  
Schindel, Foley, Bolon, Chandler, Miller**

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**A B I L L**

To amend sections 5739.033, 5739.035, 5739.123, 1  
5741.03, and 5741.05 and to enact section 5740.10 2  
of the Revised Code to authorize retail vendors 3  
with annual delivery sales in Ohio of less than 4  
\$500,000 to continue to use origin-based situsing 5  
rules for determining the appropriate sales tax 6  
jurisdiction in which a sale is taxable, to 7  
authorize all retail vendors currently using 8  
origin-based situsing to continue to do so if the 9  
Tax Commissioner determines that the Streamlined 10  
Sales and Use Tax Agreement does not allow 11  
origin-based situsing by vendors with delivery 12  
sales of less than \$500,000, to authorize 13  
out-of-state sellers with annual delivery sales in 14  
Ohio of less than \$500,000 to collect Ohio use 15  
taxes at a single uniform rate if the Commissioner 16  
makes that determination, and to provide for the 17  
distribution of use tax collected at a single 18  
uniform rate to counties and transit authorities. 19

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

**Section 1.** That sections 5739.033, 5739.035, 5739.123, 20  
5741.03, and 5741.05 be amended and section 5740.10 of the Revised 21  
Code be enacted to read as follows: 22

**Sec. 5739.033.** (A) Except as provided in division (B) of this 23  
section, divisions (C) to (I) of this section apply to sales made 24  
on and after ~~May 1, 2006~~. ~~Sales made before May 1, 2006, are~~ 25  
~~subject to section 5739.035 of the Revised Code. On and after~~ 26  
~~January 1, 2005, any~~ January 1, 2008. Any vendor may irrevocably 27  
elect to comply with divisions (C) to (I) of this section for all 28  
of the vendor's sales and places of business in this state. 29

The amount of tax due pursuant to sections 5739.02, 5739.021, 30  
5739.023, and 5739.026 of the Revised Code is the sum of the taxes 31  
imposed pursuant to those sections at the sourcing location of the 32  
sale as determined under this section or, if applicable, under 33  
division (C) of section 5739.031 or section 5739.034 of the 34  
Revised Code, or at the situs of the sale as determined under 35  
section 5739.035 of the Revised Code. This section applies only to 36  
a vendor's or seller's obligation to collect and remit sales taxes 37  
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the 38  
Revised Code or use taxes under section 5741.02, 5741.021, 39  
5741.022, or 5741.023 of the Revised Code. Division (A) of this 40  
section does not apply in determining the jurisdiction for which 41  
sellers are required to collect the use tax under section 5741.05 42  
of the Revised Code. This section does not affect the obligation 43  
of a consumer to remit use taxes on the storage, use, or other 44  
consumption of tangible personal property or on the benefit 45  
realized of any service provided, to the jurisdiction of that 46  
storage, use, or consumption, or benefit realized. 47

(B)(1) As used in this division: 48

(a) "Delivery sale" means the taxable sale of tangible 49

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 If the tax commissioner does not determine and  
certify under section 5740.10 of the Revised Code that the  
agreement allows a vendor with total annual delivery sales in this  
state of less than five hundred thousand dollars in calendar year  
2007 and thereafter to situs its sales under section 5739.035 of  
the Revised Code, a vendor that is not required to situs sales  
under divisions (C) to (I) of this section on the date of the  
commissioner's certification may continue after that date to situs  
its sales under section 5739.035 of the Revised Code.~~

~~(3) If the tax commissioner makes the certification under  
section 5740.10 of the Revised Code, and except as otherwise  
provided in divisions (B)(4) and (5) of this section, a vendor  
with total delivery sales in calendar year 2005 that are 2007 and  
each calendar year thereafter of less than thirty million five  
hundred thousand dollars may continue to situs 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 81  
determines that such services are being so provided, the 82  
commissioner shall enter the determination in the commissioner's 83  
journal and shall provide notice of the determination on the 84  
department of taxation's official internet web site. If the 85  
commissioner makes such an entry in the journal, then a vendor 86  
with total delivery sales in calendar year 2006 that are less than 87  
five million dollars may continue to situs its sales under section 88  
5739.035 of the Revised Code from May 1, 2007, through December 89  
31, 2007. 90~~

~~(3) Beginning January 1, 2008, all vendors shall source their 91  
sales under divisions (C) to (I) of this section. 92~~

~~(4) Once If the tax commissioner makes the determination and 93  
certification under section 5740.10 of the Revised Code, then, 94  
once a vendor has total delivery sales ~~that exceed the dollar~~ 95  
~~amount in division (B)(2)(a) or (b) of this section in this state~~ 96  
of five hundred thousand dollars or more for a calendar year, the 97  
vendor shall source its sales under divisions (C) to (I) of this 98  
section and shall continue to source its sales under those 99  
divisions, regardless of the amount of the vendor's total delivery 100  
sales in future years. 101~~

~~(5) If a vendor permitted under division (B)(3) of this 102  
section to situs its sales under section 5739.035 of the Revised 103  
Code is required to provide the notices under division (I)(1) of 104  
that section but fails to provide the notices as required, the 105  
vendor shall situs all subsequent sales as required under 106  
divisions (C) to (I) of this section. 107~~

~~(C) Except for sales, other than leases, of titled motor 108  
vehicles, titled watercraft, or titled outboard motors as provided 109  
in section 5741.05 of the Revised Code, or as otherwise provided 110  
in this section and section 5739.034 of the Revised Code, all 111  
sales shall be sourced as follows: 112~~

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

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

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

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

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

(6) As used in division (C) of this section, "receive" means taking possession of tangible personal property or making first

use of a service. "Receive" does not include possession by a 144  
shipping company on behalf of a consumer. 145

(D)(1)(a) Notwithstanding divisions (C)(1) to (5) of this 146  
section, a business consumer that is not a holder of a direct 147  
payment permit granted under section 5739.031 of the Revised Code, 148  
that purchases a digital good, computer software, except computer 149  
software received in person by a business consumer at a vendor's 150  
place of business, or a service, and that knows at the time of 151  
purchase that such digital good, software, or service will be 152  
concurrently available for use in more than one taxing 153  
jurisdiction shall deliver to the vendor in conjunction with its 154  
purchase an exemption certificate claiming multiple points of use, 155  
or shall meet the requirements of division (D)(2) of this section. 156  
On receipt of the exemption certificate claiming multiple points 157  
of use, the vendor is relieved of its obligation to collect, pay, 158  
or remit the tax due, and the business consumer must pay the tax 159  
directly to the state. 160

(b) A business consumer that delivers the exemption 161  
certificate claiming multiple points of use to a vendor may use 162  
any reasonable, consistent, and uniform method of apportioning the 163  
tax due on the digital good, computer software, or service that is 164  
supported by the consumer's business records as they existed at 165  
the time of the sale. The business consumer shall report and pay 166  
the appropriate tax to each jurisdiction where concurrent use 167  
occurs. The tax due shall be calculated as if the apportioned 168  
amount of the digital good, computer software, or service had been 169  
delivered to each jurisdiction to which the sale is apportioned 170  
under this division. 171

(c) The exemption certificate claiming multiple points of use 172  
shall remain in effect for all future sales by the vendor to the 173  
business consumer until it is revoked in writing by the business 174  
consumer, except as to the business consumer's specific 175

apportionment of a subsequent sale under division (D)(1)(b) of 176  
this section and the facts existing at the time of the sale. 177

(2) When the vendor knows that a digital good, computer 178  
software, or service sold will be concurrently available for use 179  
by the business consumer in more than one jurisdiction, but the 180  
business consumer does not provide an exemption certificate 181  
claiming multiple points of use as required by division (D)(1) of 182  
this section, the vendor may work with the business consumer to 183  
produce the correct apportionment. Governed by the principles of 184  
division (D)(1)(b) of this section, the vendor and business 185  
consumer may use any reasonable, but consistent and uniform, 186  
method of apportionment that is supported by the vendor's and 187  
business consumer's books and records as they exist at the time 188  
the sale is reported for purposes of the taxes levied under this 189  
chapter. If the business consumer certifies to the accuracy of the 190  
apportionment and the vendor accepts the certification, the vendor 191  
shall collect and remit the tax accordingly. In the absence of bad 192  
faith, the vendor is relieved of any further obligation to collect 193  
tax on any transaction where the vendor has collected tax pursuant 194  
to the information certified by the business consumer. 195

(3) When the vendor knows that the digital good, computer 196  
software, or service will be concurrently available for use in 197  
more than one jurisdiction, and the business consumer does not 198  
have a direct pay permit and does not provide to the vendor an 199  
exemption certificate claiming multiple points of use as required 200  
in division (D)(1) of this section, or certification pursuant to 201  
division (D)(2) of this section, the vendor shall collect and 202  
remit the tax based on division (C) of this section. 203

(4) Nothing in this section shall limit a person's obligation 204  
for sales or use tax to any state in which a digital good, 205  
computer software, or service is concurrently available for use, 206  
nor limit a person's ability under local, state, or federal law, 207

to claim a credit for sales or use taxes legally due and paid to 208  
other jurisdictions. 209

(E) A person who holds a direct payment permit issued under 210  
section 5739.031 of the Revised Code is not required to deliver an 211  
exemption certificate claiming multiple points of use to a vendor. 212  
But such permit holder shall comply with division (D)(2) of this 213  
section in apportioning the tax due on a digital good, computer 214  
software, or a service for use in business that will be 215  
concurrently available for use in more than one taxing 216  
jurisdiction. 217

(F)(1) Notwithstanding divisions (C)(1) to (5) of this 218  
section, the consumer of direct mail that is not a holder of a 219  
direct payment permit shall provide to the vendor in conjunction 220  
with the sale either an exemption certificate claiming direct mail 221  
prescribed by the tax commissioner, or information to show the 222  
jurisdictions to which the direct mail is delivered to recipients. 223

(2) Upon receipt of such exemption certificate, the vendor is 224  
relieved of all obligations to collect, pay, or remit the 225  
applicable tax and the consumer is obligated to pay that tax on a 226  
direct pay basis. An exemption certificate claiming direct mail 227  
shall remain in effect for all future sales of direct mail by the 228  
vendor to the consumer until it is revoked in writing. 229

(3) Upon receipt of information from the consumer showing the 230  
jurisdictions to which the direct mail is delivered to recipients, 231  
the vendor shall collect the tax according to the delivery 232  
information provided by the consumer. In the absence of bad faith, 233  
the vendor is relieved of any further obligation to collect tax on 234  
any transaction where the vendor has collected tax pursuant to the 235  
delivery information provided by the consumer. 236

(4) If the consumer of direct mail does not have a direct 237  
payment permit and does not provide the vendor with either an 238



exemption certificate claiming direct mail or delivery information 239  
as required by division (F)(1) of this section, the vendor shall 240  
collect the tax according to division (C)(5) of this section. 241  
Nothing in division (F)(4) of this section shall limit a 242  
consumer's obligation to pay sales or use tax to any state to 243  
which the direct mail is delivered. 244

(5) If a consumer of direct mail provides the vendor with 245  
documentation of direct payment authority, the consumer shall not 246  
be required to provide an exemption certificate claiming direct 247  
mail or delivery information to the vendor. 248

(G) If the vendor provides lodging to transient guests as 249  
specified in division (B)(2) of section 5739.01 of the Revised 250  
Code, the sale shall be sourced to the location where the lodging 251  
is located. 252

(H)(1) As used in this division and division (I) of this 253  
section, "transportation equipment" means any of the following: 254

(a) Locomotives and railcars that are utilized for the 255  
carriage of persons or property in interstate commerce. 256

(b) Trucks and truck-tractors with a gross vehicle weight 257  
rating of greater than ten thousand pounds, trailers, 258  
semi-trailers, or passenger buses that are registered through the 259  
international registration plan and are operated under authority 260  
of a carrier authorized and certificated by the United States 261  
department of transportation or another federal authority to 262  
engage in the carriage of persons or property in interstate 263  
commerce. 264

(c) Aircraft that are operated by air carriers authorized and 265  
certificated by the United States department of transportation or 266  
another federal authority to engage in the carriage of persons or 267  
property in interstate or foreign commerce. 268

(d) Containers designed for use on and component parts 269

attached to or secured on the items set forth in division	270
(H)(1)(a), (b), or (c) of this section.	271
(2) A sale, lease, or rental of transportation equipment	272
shall be sourced pursuant to division (C) of this section.	273
(I)(1) A lease or rental of tangible personal property that	274
does not require recurring periodic payments shall be sourced	275
pursuant to division (C) of this section.	276
(2) A lease or rental of tangible personal property that	277
requires recurring periodic payments shall be sourced as follows:	278
(a) In the case of a motor vehicle, other than a motor	279
vehicle that is transportation equipment, or an aircraft, other	280
than an aircraft that is transportation equipment, such lease or	281
rental shall be sourced as follows:	282
(i) An accelerated tax payment on a lease or rental taxed	283
pursuant to division (A)(2) of section 5739.02 of the Revised Code	284
shall be sourced to the primary property location at the time the	285
lease or rental is consummated. Any subsequent taxable charges on	286
the lease or rental shall be sourced to the primary property	287
location for the period in which the charges are incurred.	288
(ii) For a lease or rental taxed pursuant to division (A)(3)	289
of section 5739.02 of the Revised Code, each lease or rental	290
installment shall be sourced to the primary property location for	291
the period covered by the installment.	292
(b) In the case of a lease or rental of all other tangible	293
personal property, other than transportation equipment, such lease	294
or rental shall be sourced as follows:	295
(i) An accelerated tax payment on a lease or rental that is	296
taxed pursuant to division (A)(2) of section 5739.02 of the	297
Revised Code shall be sourced pursuant to division (C) of this	298
section at the time the lease or rental is consummated. Any	299

subsequent taxable charges on the lease or rental shall be sourced 300  
to the primary property location for the period in which the 301  
charges are incurred. 302

(ii) For a lease or rental that is taxed pursuant to division 303  
(A)(3) of section 5739.02 of the Revised Code, the initial lease 304  
or rental installment shall be sourced pursuant to division (C) of 305  
this section. Each subsequent installment shall be sourced to the 306  
primary property location for the period covered by the 307  
installment. 308

(3) As used in division (I) of this section, "primary 309  
property location" means an address for tangible personal property 310  
provided by the lessee or renter that is available to the lessor 311  
or owner from its records maintained in the ordinary course of 312  
business, when use of that address does not constitute bad faith. 313

**Sec. 5739.035.** This section only applies to sales that ~~are~~ 314  
~~required to~~ may be sitused under this section pursuant to division 315  
~~(A) or~~ (B) of section 5739.033 of the Revised Code. 316

(A) Except as otherwise provided in this section, the situs 317  
of all sales is the vendor's place of business. 318

(1) If the consumer or the consumer's agent takes possession 319  
of the tangible personal property at a place of business of the 320  
vendor where the purchase contract or agreement was made, the 321  
situs of the sale is that place of business. 322

(2) If the consumer or the consumer's agent takes possession 323  
of the tangible personal property other than at a place of 324  
business of the vendor, or takes possession at a warehouse or 325  
similar facility of the vendor, the situs of the sale is the 326  
vendor's place of business where the purchase contract or 327  
agreement was made or the purchase order was received. 328

(3) If the vendor provides a service specified in division 329

(B)(3)(a), (b), (c), (d), (n), (o), (q), (r), or (s) of section 330  
5739.01 or makes a sale specified in division (B)(8) of section 331  
5739.01 of the Revised Code, the situs of the sale is the vendor's 332  
place of business where the service is performed or the contract 333  
or agreement for the service was made or the purchase order was 334  
received. 335

(B) If the vendor is a transient vendor as specified in 336  
division (B) of section 5739.17 of the Revised Code, the situs of 337  
the sale is the vendor's temporary place of business or, if the 338  
transient vendor is the lessor of titled motor vehicles, titled 339  
watercraft, or titled outboard motors, at the location where the 340  
lessee keeps the leased property. 341

(C) If the vendor makes sales of tangible personal property 342  
from a stock of goods carried in a motor vehicle, from which the 343  
purchaser makes selection and takes possession, or from which the 344  
vendor sells tangible personal property the quantity of which has 345  
not been determined prior to the time the purchaser takes 346  
possession, the situs of the sale is the location of the motor 347  
vehicle when the sale is made. 348

(D) If the vendor is a delivery vendor as specified in 349  
division (D) of section 5739.17 of the Revised Code, the situs of 350  
the sale is the place where the tangible personal property is 351  
delivered, where the leased property is used, or where the service 352  
is performed or received. 353

(E) If the vendor provides a service specified in division 354  
(B)(3)(e), (g), (h), (j), (k), (l), (m), (p), or (t) of section 355  
5739.01 of the Revised Code, the situs of the sale is the location 356  
of the consumer where the service is performed or received. 357

(F) If the vendor provides lodging to transient guests as 358  
specified in division (B)(2) of section 5739.01 of the Revised 359  
Code, the situs of the sale is the location where the lodging is 360

located. 361

(G) If the vendor sells a warranty, maintenance or service 362  
contract, or similar agreement as specified in division (B)(7) of 363  
section 5739.01 of the Revised Code and the vendor is a delivery 364  
vendor, the situs of the sale is the location of the consumer. If 365  
the vendor is not a delivery vendor, the situs of the sale is the 366  
vendor's place of business where the contract or agreement was 367  
made, unless the warranty or contract is a component of the sale 368  
of a titled motor vehicle, titled watercraft, or titled outboard 369  
motor, in which case the situs of the sale is the county of 370  
titling. 371

(H) Except as otherwise provided in this division, if the 372  
vendor sells a prepaid authorization number or a prepaid telephone 373  
calling card, the situs of the sale is the vendor's place of 374  
business and shall be taxed at the time of sale. If the vendor 375  
sells a prepaid authorization number or prepaid telephone calling 376  
card through a telephone call, electronic commerce, or any other 377  
form of remote commerce, the situs of the sale is the consumer's 378  
shipping address, or, if there is no item shipped, at the 379  
consumer's billing address. 380

(I) Division (I) of this section applies only if the tax 381  
commissioner makes the certification under section 5740.10 of the 382  
Revised Code. 383

(1)(a) In each delivery sale by a vendor permitted to situs 384  
its sales under this section, the vendor shall clearly indicate on 385  
the invoice or other similar document provided to the purchaser at 386  
the time of the sale that the vendor is a vendor permitted to 387  
situs its sales under this section, and that the purchaser may 388  
claim a partial refund of the sales tax collected on the 389  
transaction if the tax rate for the tax jurisdiction in which the 390  
vendor is located exceeds the tax rate for the tax jurisdiction in 391  
which the purchaser receives the property. 392

(b) In each sale by a vendor permitted to situs its sales 393  
under this section, the vendor shall clearly indicate on the 394  
invoice or other similar document provided to the purchaser at the 395  
time of the sale that the vendor is a vendor permitted to situs 396  
its sales under this section, and that the purchaser may be liable 397  
for additional sales or use tax if the purchaser removes the 398  
property from the tax jurisdiction in which the purchaser receives 399  
the property to a tax jurisdiction with a tax rate that exceeds 400  
the rate in the tax jurisdiction in which the purchaser received 401  
the property. 402

(2) A purchaser that receives tangible personal property or 403  
services in a delivery sale from a vendor permitted to situs its 404  
sales under this section may claim a refund of the tax the vendor 405  
collected and remitted on the sale in an amount equal to the 406  
excess of the tax collected and remitted over the tax that would 407  
have been due if the sale had been sitused to the tax jurisdiction 408  
in which the purchaser received the property or service. 409

A refund is authorized under this division only if the 410  
invoice or other similar document provided to the purchaser at the 411  
time of the sale includes the notice required under division 412  
(I)(1) of this section. 413

Refunds shall be claimed in the manner prescribed by section 414  
5739.07 of the Revised Code. 415

(3) A purchaser of tangible personal property from a vendor 416  
permitted to situs its sales under this section that removes the 417  
property from the tax jurisdiction in which the purchaser received 418  
the property is liable for additional tax in an amount equal to 419  
the excess of the tax that would have been due on the sale if the 420  
sale had been sitused to the tax jurisdiction to which the 421  
purchaser removed the property over the tax that the vendor 422  
collected and remitted on the sale. 423

(4) For the purposes of division (I) of this section, 424  
"delivery sale" has the same meaning as in section 5739.033 of the 425  
Revised Code, and "tax jurisdiction" has the same meaning as in 426  
section 5739.24 of the Revised Code. 427

(J) Nothing in this section relieves a person claiming to be 428  
authorized to situs sales under this section, but not so 429  
authorized, from liability for tax, penalty, interest, or 430  
additional charges imposed under this chapter for failure to 431  
collect the amount of tax lawfully due applying the situsing 432  
provisions of divisions (C) to (I) of section 5739.033 of the 433  
Revised Code. 434

**Sec. 5739.123.** (A) As used in this section, 435  
"destination-based sourcing requirements" means the manner in 436  
which sales are required to be sourced under divisions (C) to (I) 437  
of section 5739.033 of the Revised Code. 438

(B) A vendor who holds a license issued ~~prior to May 1, 2006,~~ 439  
under division (A) of section 5739.17 of the Revised Code may 440  
apply for temporary compensation to assist the vendor in complying 441  
with the destination-based sourcing requirements for the first six 442  
months those sourcing requirements become applicable to the vendor 443  
under section 5739.033 of the Revised Code. The vendor shall file 444  
the application in accordance with division (C) of this section. 445  
The compensation shall be the actual amount of tax collected per 446  
county for each month of the six-month period, not to exceed 447  
twenty-five dollars per county per month, for sales of tangible 448  
personal property delivered to each county in which the vendor 449  
does not have a fixed place of business and does not, or is not 450  
required to, hold a license issued under division (A) of section 451  
5739.17 of the Revised Code for that business. Only amounts paid 452  
by the vendor for which the vendor is eligible for a discount 453  
under division (B) of section 5739.12 of the Revised Code and that 454

are shown on returns filed during that six-month period shall be 455  
considered in calculating the compensation. In no event shall a 456  
vendor receive compensation that exceeds its total cost of 457  
complying with the destination-based sourcing requirements. For 458  
purposes of the six-month compensation period, a partial month 459  
shall be considered a month. 460

(C) A vendor that applies for compensation under this section 461  
shall file an application with the tax commissioner on a form 462  
prescribed by the commissioner. The application shall be filed 463  
within sixty days after the end of the reporting period that 464  
includes the last day of the last month of the six-month period 465  
for which the vendor is requesting compensation. The commissioner 466  
shall determine the amount of compensation to which the vendor is 467  
entitled, and if that amount is equal to or greater than the 468  
amount claimed on the application, the commissioner shall certify 469  
that amount to the director of budget and management and the 470  
treasurer of state for payment from the general revenue fund. If 471  
the commissioner determines that the amount of compensation to 472  
which the vendor is entitled is less than the amount claimed on 473  
the vendor's application, the commissioner shall proceed in 474  
accordance with section 5703.70 of the Revised Code. 475

(D) The compensation provided under this section shall not 476  
reduce the amount required to be returned to counties and transit 477  
authorities under section 5739.21 of the Revised Code. 478

Sec. 5740.10. (A) As used in this section, "delivery sale" 479  
has the same meaning as in section 5739.033 of the Revised Code. 480

(B) It is the intent of the General Assembly for this state 481  
to become a full member in the streamlined sales and use tax 482  
agreement to enhance collection of the taxes imposed under 483  
Chapters 5739. and 5741. of the Revised Code by remote multi-state 484  
sellers. This state's participation has been jeopardized, however, 485



because the agreement does not resolve issues relating to the 486  
situsing of certain sales and because of the impact the agreement 487  
has on businesses located within and outside this state that have 488  
annual delivery sales in this state of less than five hundred 489  
thousand dollars. 490

If the tax commissioner determines, on or before October 1, 491  
2007, that the agreement has been amended or interpreted by the 492  
streamlined sales tax governing board to allow a vendor with total 493  
annual delivery sales of less than five hundred thousand dollars 494  
to situs its sales under section 5739.035 of the Revised Code, the 495  
commissioner shall certify that determination by journal entry on 496  
or before that date, shall provide notice of the determination on 497  
the department of taxation's web site, and shall notify vendors 498  
and sellers the commissioner reasonably believes to be affected by 499  
the certification. 500

**Sec. 5741.03.** (A) ~~Four and two tenths~~ One hundred per cent of 501  
all money deposited into the state treasury under sections 5741.01 502  
to 5741.22 of the Revised Code that is not required to be 503  
distributed as provided in division (B) or (C) of this section 504  
shall be credited to ~~the local government fund for distribution in~~ 505  
~~accordance with section 5747.50 of the Revised Code, six tenths of~~ 506  
~~one per cent shall be credited to the local government revenue~~ 507  
~~assistance fund for distribution in accordance with section~~ 508  
~~5747.61 of the Revised Code, and ninety five and two tenths per~~ 509  
~~cent shall be credited to the general revenue fund.~~ 510

(B) In any case where any county or transit authority has 511  
levied a tax or taxes pursuant to section 5741.021, 5741.022, or 512  
5741.023 of the Revised Code, the tax commissioner shall, within 513  
forty-five days after the end of each month, determine and certify 514  
to the director of budget and management the amount of the 515  
proceeds of such tax or taxes from billings and assessments 516

received during that month, or shown on tax returns or reports 517  
filed during that month, to be returned to the county or transit 518  
authority levying the tax or taxes, which amounts shall be 519  
determined in the manner provided in section 5739.21 of the 520  
Revised Code. The director of budget and management shall 521  
transfer, from the ~~same funds and in the same proportions~~ 522  
~~specified in division (A) of this section~~ general revenue fund, to 523  
the permissive tax distribution fund created by division (B)(1) of 524  
section 4301.423 of the Revised Code and to the local sales tax 525  
administrative fund created by division ~~(B)~~(C) of section 5739.21 526  
of the Revised Code, the amounts certified by the tax 527  
commissioner. The tax commissioner shall then, on or before the 528  
twentieth day of the month in which such certification is made, 529  
provide for payment of such respective amounts to the county 530  
treasurer or to the fiscal officer of the transit authority 531  
levying the tax or taxes. The amount transferred to the local 532  
sales tax administrative fund is for use by the tax commissioner 533  
in defraying costs the commissioner incurs in administering such 534  
taxes levied by a county or transit authority. 535

(C) Of the revenue deposited into the state treasury from 536  
taxes paid under division (B) of section 5741.05 of the Revised 537  
Code, a percentage shall be distributed each fiscal year to all 538  
counties and transit authorities that levy a tax under section 539  
5739.021, 5739.023, or 5739.026 of the Revised Code. The 540  
percentage to be distributed each fiscal year shall be computed by 541  
dividing the amount described in division (C)(1) by the amount 542  
described in division (C)(2) of this section: 543

(1) The total sales and use tax revenue distributed to 544  
counties and transit authorities in the calendar year that ended 545  
in the preceding fiscal year; 546

(2) The sum of the total sales and use tax revenue 547  
distributed to such counties and transit authorities in that 548

calendar year plus the total revenue collected in that calendar 549  
year from the taxes levied under sections 5739.02 and 5741.02 of 550  
the Revised Code. 551

(D) Each county and transit authority shall receive a monthly 552  
distribution each fiscal year from the revenue to be distributed 553  
as provided in division (C) of this section. The amount of the 554  
distribution for each such county and transit authority shall 555  
equal a percentage of the revenue to be distributed in the fiscal 556  
year under that division. The percentage shall be computed by 557  
dividing the amount described in division (D)(1) by the amount 558  
described in division (D)(2) of this section: 559

(1) The total sales and use tax revenue distributed to the 560  
county or transit authority under division (B) of section 5739.21 561  
of the Revised Code in the calendar year that ended in the 562  
preceding fiscal year; 563

(2) The total sales and use tax revenue distributed to all 564  
counties and transit authorities under division (B) of section 565  
5739.21 of the Revised Code in that calendar year. 566

**Sec. 5741.05.** (A) ~~Beginning January 1, 2005~~ Except as 567  
provided in division (B) of this section, a seller that collects 568  
the tax levied by sections 5741.02, 5741.021, 5741.022, or 569  
5741.023 of the Revised Code on transactions, other than sales of 570  
titled motor vehicles, titled watercraft, or titled outboard 571  
motors, shall determine under section 5739.033 or 5739.034 of the 572  
Revised Code the jurisdiction for which to collect the tax. A 573  
vendor or seller of motor vehicles, watercraft, or outboard motors 574  
required to be titled in this state shall collect the tax levied 575  
by section 5739.02 or 5741.02 of the Revised Code and the 576  
additional taxes levied by division (A)(1) of section 5741.021, 577  
division (A)(1) of section 5741.022, and division (A)(1) of 578  
section 5741.023 of the Revised Code for the consumer's county of 579

residence as provided in section 1548.06 and division (B) of 580  
section 4505.06 of the Revised Code. 581

(B)(1) Divisions (B) and (C) of this section apply only if 582  
the tax commissioner makes the certification under section 5740.10 583  
of the Revised Code. 584

(2) For the purposes of this division and division (C) of 585  
this section, "delivery sale" has the same meaning as in section 586  
5739.033 of the Revised Code, and "tax jurisdiction" has the same 587  
meaning as in section 5739.24 of the Revised Code. 588

(3) Except as otherwise provided in division (B)(4) of this 589  
section, and notwithstanding sections 5741.02, 5741.021, 5741.022, 590  
and 5741.023 of the Revised Code, a seller with total delivery 591  
sales in this state in calendar year 2007 and each calendar year 592  
thereafter of less than five hundred thousand dollars may elect to 593  
collect the tax due under this chapter at a rate equal to the sum 594  
of the tax levied under section 5741.02 of the Revised Code and 595  
the lowest combined rate of tax levied in any tax jurisdiction in 596  
this state under sections 5741.021, 5741.022, and 5741.023 of the 597  
Revised Code. 598

(4) Once a seller has total delivery sales in this state of 599  
five hundred thousand dollars or more for a calendar year, the 600  
seller shall source its sales pursuant to division (A) of this 601  
section regardless of the amount of the seller's total delivery 602  
sales in future years. 603

(C)(1) In each sale by a seller permitted to collect use tax 604  
under division (B) of this section, the seller shall clearly 605  
indicate on each invoice or other similar document provided to the 606  
purchaser at the time of the sale that the seller is authorized to 607  
collect use tax at the rate prescribed in division (B)(3) of this 608  
section and that the purchaser may be liable for additional use 609  
tax if the purchaser removes the property from the tax 610

jurisdiction in which the purchaser receives the property to a tax jurisdiction with a tax rate exceeding the rate in the tax jurisdiction in which the purchaser receives the property. 611  
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(2) If a purchaser purchases tangible personal property from a seller permitted to collect use tax pursuant to division (B) of this section and pays the tax due under that division to the seller, no assessment may be made against the purchaser for additional tax due under section 5741.021, 5741.022, or 5741.023 of the Revised Code unless the purchaser subsequently removes the property from the tax jurisdiction in which the resident received the property to another tax jurisdiction with a higher tax rate. 614  
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(3) Nothing in this section relieves a person that claims to be authorized to collect the tax as provided in division (B) of this section, but that is not so authorized, from liability for tax, penalties, interest, or additional charges imposed under this chapter for failure to collect the amount of tax lawfully due applying the situsing provisions of division (A) of this section. 622  
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(D) A vendor or seller is not responsible for collecting or remitting additional tax if a consumer subsequently stores, uses, or consumes the tangible personal property or service in another jurisdiction with a rate of tax imposed by sections 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code that is higher than the amount collected by the vendor or seller pursuant to Chapter 5739. or 5741. of the Revised Code. 628  
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**Section 2.** That existing sections 5739.033, 5739.035, 5739.123, 5741.03, and 5741.05 of the Revised Code are hereby repealed. 635  
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**Section 3.** That the amendment or enactment by this act of sections 5739.033, 5739.035, 5740.10, 5741.03, and 5741.05 of the Revised Code applies to sales occurring on or after January 1, 638  
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2008.	641
<b>Section 4.</b> Section 5739.035 of the Revised Code is presented	642
in this act as a composite of the section as amended by both Am.	643
Sub. H.B. 66 and Am. Sub. S.B. 26 of the 126th General Assembly.	644
The General Assembly, applying the principle stated in division	645
(B) of section 1.52 of the Revised Code that amendments are to be	646
harmonized if reasonably capable of simultaneous operation, finds	647
that the composite is the resulting version of the section in	648
effect prior to the effective date of the section as presented in	649
this act.	650