

# AN ACT

To amend sections 5703.70, 5739.03, 5739.033, 5739.034, 5739.24, 5741.03, and 5741.05 and to enact section 5739.061 of the Revised Code and later to repeal sections 5739.035, 5739.123, 5739.24, and 5740.10 of the Revised Code to require vendors to utilize origin-based sourcing for intrastate sales beginning January 1, 2010, to discontinue compensation of impacted counties for sales tax losses incurred under destination-based sourcing, to compensate vendors required to convert from destination-based sourcing to origin-based sourcing, to permit a vendor, when making a refund, to retain the amount of the delivery charge and sales taxes attributable to the charge, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 5703.70, 5739.03, 5739.033, 5739.034, 5739.24, 5741.03, and 5741.05 be amended and section 5739.061 of the Revised Code be enacted to read as follows:

Sec. 5703.70. (A) On the filing of an application for refund under section 3734.905, 4307.05, 4307.07, 5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5739.07, 5739.071, 5739.104, 5741.10, 5743.05, 5743.53, 5749.08, or 5751.08 of the Revised Code, or an application for compensation under section ~~5739.123~~ 5739.061 of the Revised Code, if the tax commissioner determines that the amount of the refund or compensation to which the applicant is entitled is less than the amount claimed in the application, the commissioner shall give the applicant written notice by ordinary mail of the amount. The notice shall be sent to the address shown on the application unless the applicant notifies the commissioner of a different address. The applicant shall have sixty days from the date the commissioner mails the notice to provide additional information to the commissioner or request a hearing, or both.

(B) If the applicant neither requests a hearing nor provides additional information to the tax commissioner within the time prescribed by division (A) of this section, the commissioner shall take no further action, and the refund or compensation amount ~~or compensation amount~~ denied becomes final.

(C)(1) If the applicant requests a hearing within the time prescribed by division (A) of this section, the tax commissioner shall assign a time and place for the hearing and notify the applicant of such time and place, but the commissioner may continue the hearing from time to time as necessary. After the hearing, the commissioner may make such adjustments to the refund or compensation as the commissioner finds proper, and shall issue a final determination thereon.

(2) If the applicant does not request a hearing, but provides additional information, within the time prescribed by division (A) of this section, the commissioner shall review the information, make such adjustments to the refund or compensation as the commissioner finds proper, and issue a final determination thereon.

(3) The commissioner shall serve a copy of the final determination made under division (C)(1) or (2) of this section on the applicant in the manner provided in section 5703.37 of the Revised Code, and the decision is final, subject to appeal under section 5717.02 of the Revised Code.

(D) The tax commissioner shall certify to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code, the amount of the refund to be refunded under division (B) or (C) of this section. The commissioner also shall certify to the director and treasurer of state for payment from the general revenue fund the amount of compensation to be paid under division (B) or (C) of this section.

Sec. 5739.03. (A) Except as provided in section 5739.05 of the Revised Code, the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale, in the manner and at the times provided as follows:

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

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's

agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

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

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:

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

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

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

(iv) A vendor 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.

(2) The vendor 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.

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

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

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

(6) 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 vendor. 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.

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

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt requested. Upon receipt of such request and prior to entering into the contract or agreement, the contractee shall provide to the contractor or vendor a certification sufficiently detailed to enable the contractor or vendor to ascertain the

resulting classification of all materials purchased or fabricated by the contractor or vendor and transferred to the contractee. This requirement applies to a contractee regardless of whether the contractee holds a direct payment permit under section 5739.031 of the Revised Code or provides to the contractor or vendor an exemption certificate as provided under this section.

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

If a contractee fails to provide such certification upon the request of the contractor or vendor, the contractor or vendor shall comply with the provisions of this chapter and Chapter 5741. of the Revised Code without the certification. If the tax commissioner determines that such compliance has been performed in good faith and that certain property treated as tangible personal property by the contractor or vendor is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the construction contractor or vendor shall be excused from any liability on those materials.

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

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

(E) A vendor who files a petition for reassessment contesting the assessment of tax on sales for which the vendor obtained no valid exemption certificates and for which the vendor failed to establish that the sales were properly not subject to the tax during the one-hundred-twenty-day period allowed under division (B) of this section, may present to the tax commissioner additional evidence to prove that the sales were properly subject to a claim of exception or exemption. The vendor shall file such

evidence within ninety days of the receipt by the vendor of the notice of assessment, except that, upon application and for reasonable cause, the period for submitting such evidence shall be extended thirty days.

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

(F) Whenever a vendor refunds ~~to the consumer~~ the full price, minus any separately stated delivery charge, of an item of tangible personal property on which the tax imposed under this chapter has been paid, the vendor shall also refund the full amount of the tax paid, minus the amount of tax attributable to the delivery charge.

~~Sec. 5739.033. (A) Except as provided in division (B) of this section, divisions (C) to (I) of this section apply to sales made on and after January 1, 2008. Any vendor previously required to comply with divisions (C) to (I) of this section and any vendor that irrevocably elects to comply with divisions (C) to (I) of this section for all of the vendor's sales and places of business in this state shall continue to source its sales under those divisions.~~

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

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

~~(a) "Delivery sale" means the taxable sale of tangible personal property or a service that is received by a consumer, or a donee designated by the consumer, in a taxing jurisdiction that is not the taxing jurisdiction in which the vendor has a fixed place of business.~~

~~(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) If the tax commissioner does not make the certification under section 5740.10 of the Revised Code, a vendor that is not required by division (A) of this section 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 unless it is required, under division (B)(5) of this section, to situs its sales under divisions (C) to (I) of this section.~~

~~(3) Except as otherwise provided in divisions (B)(4) and (5) of this section, a vendor with total delivery sales within this state in prior calendar years, beginning with calendar year 2007, of less than five hundred thousand dollars may situs its sales under section 5739.035 of the Revised Code.~~

~~(4) Once a vendor has total delivery sales in this state of five hundred thousand dollars or more for a prior calendar year, the vendor shall source its sales under divisions (C) to (I) of this section and shall continue to source its sales under those divisions regardless of the amount of the vendor's total delivery sales in future years.~~

~~(5) A vendor permitted under division (B)(3) of this section to situs its sales under section 5739.035 of the Revised Code that fails to provide, absent a clerical error, the notices required under division (I)(1) of section 5739.035 of the Revised Code shall situs all subsequent sales as required under divisions (C) to (I) of this section Beginning January 1, 2010, retail sales, excluding the lease or rental, of tangible personal property or digital goods shall be sourced to the location where the vendor receives an order for the sale of such property or goods if:~~

~~(a) The vendor receives the order in this state and the consumer receives the property or goods in this state;~~

~~(b) The location where the consumer receives the property or goods is determined under division (C)(2), (3), or (4) of this section; and~~

~~(c) The record-keeping system used by the vendor to calculate the tax imposed captures the location where the order is received at the time the order is received.~~

~~(2) A consumer has no additional liability to this state under this chapter or Chapter 5741. of the Revised Code for tax, penalty, or interest on a sale for which the consumer remits tax to the vendor in the amount invoiced by the vendor if the invoice amount is calculated at either the rate applicable to the location where the consumer receives the property or digital good or at the rate applicable to the location where the order is received by the vendor. A consumer may rely on a written representation by the vendor as to the location where the order for the sale was received by the vendor. If the~~

consumer does not have a written representation by the vendor as to the location where the order was received by the vendor, the consumer may use a location indicated by a business address for the vendor that is available from records that are maintained in the ordinary course of the consumer's business to determine the rate applicable to the location where the order was received.

(3) For the purposes of division (B) of this section, the location where an order is received by or on behalf of a vendor means the physical location of the vendor or a third party such as an established outlet, office location, or automated order receipt system operated by or on behalf of the vendor, where an order is initially received by or on behalf of the vendor, and not where the order may be subsequently accepted, completed, or fulfilled. An order is received when all necessary information to determine whether the order can be accepted has been received by or on behalf of the vendor. The location from which the property or digital good is shipped shall not be used to determine the location where the order is received by the vendor.

(4) For the purposes of division (B) of this section, if services subject to taxation under this chapter or Chapter 5741. of the Revised Code are sold with tangible personal property or digital goods pursuant to a single contract or in the same transaction, the services are billed on the same billing statement or invoice, and, because of the application of division (B) of this section, the transaction would be sourced to more than one jurisdiction, the situs of the transaction shall be the location where the order is received by or on behalf of the vendor.

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

(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 shipping company on behalf of a consumer.

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

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

(c) The exemption certificate claiming multiple points of use shall

remain in effect for all future sales by the vendor to the business consumer until it is revoked in writing by the business consumer, except as to the business consumer's specific apportionment of a subsequent sale under division (D)(1)(b) of this section and the facts existing at the time of the sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

engage in the carriage of persons or property in interstate commerce.

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

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

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

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

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

(a) In the case of a motor vehicle, other than a motor vehicle that is transportation equipment, or an aircraft, other than an aircraft that is transportation equipment, such lease or rental shall be sourced as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

service.

(8) "Prepaid calling service" and "prepaid wireless calling service" have the same meanings as in section 5739.01 of the Revised Code.

(9) "Service address" means:

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

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

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

(10) "Private communication service" means a telecommunications service that entitles a customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

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

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

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

(E) The sale of the following telecommunications services shall be

sourced to each level of taxing jurisdiction, as follows:

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

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

(3) A sale of prepaid calling service or prepaid wireless calling service shall be sourced under division (C) of section 5739.033 of the Revised Code ~~or, if permitted by division (B) of that section, shall be situated under section 5739.035 of the Revised Code~~. But in the case of prepaid wireless calling service, in lieu of sourcing the sale of the service under division (C)(5) of section 5739.033 of the Revised Code, the service provider may elect to source the sale to the location associated with the mobile telephone number.

(4) A sale of a private communication service shall be sourced as follows:

(a) Service for a separate charge related to a customer channel termination point shall be sourced to each level of jurisdiction in which the customer channel termination point is located;

(b) Service where all customer channel termination points are located entirely within one jurisdiction or level of jurisdiction shall be sourced in the jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged shall be sourced fifty per cent in each level of jurisdiction in which the customer channel termination points are located;

(d) Service for segments of a channel located in more than one jurisdiction or level of jurisdiction and which segments are not separately billed shall be sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

Sec. 5739.061. (A) As used in this section, "origin-based sourcing requirements" means the manner in which intrastate sales are to be sourced under division (B)(1) of section 5739.033 of the Revised Code.

(B) On and after July 1, 2009, a vendor that received temporary compensation under section 5739.123 of the Revised Code as that section

existed before its repeal by H.B. 429 of the 127th general assembly may apply for compensation to assist the vendor in complying with the origin-based sourcing requirements. The vendor shall file an application in accordance with division (C) of this section. The compensation shall be a one-time payment equal to the actual total costs the vendor incurred in complying with the origin-based sourcing requirements, not to exceed one thousand dollars for vendors that were required to comply with divisions (C) to (I) of section 5739.033 of the Revised Code before the effective date of this section, and six hundred dollars for vendors that irrevocably elected to comply with divisions (C) to (I) of that section before the effective date of this section. In no event shall a vendor receive compensation that exceeds its total cost of complying with the origin-based sourcing requirements.

(C) To be considered for compensation under this section, a vendor shall file an application with the tax commissioner on a form prescribed by the commissioner. The commissioner shall determine the amount of compensation to which the vendor is entitled, and if that amount is equal to or greater than the amount claimed on the application, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the general revenue fund. If the commissioner determines that the amount of compensation to which the vendor is entitled is less than the amount claimed on the vendor's application, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

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

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

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

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

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

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

(B)(1) Beginning in 2006 and ending January 31, 2009, within thirty

days after the thirtieth day of June and the thirty-first day of December of each year, a master account holder that makes a sale that is subject to the destination-based sourcing requirements shall file with the tax commissioner a report that details the total taxable sales it made for the prior six-month period in each tax jurisdiction and at each fixed place of business for which the master account holder holds or should hold a license, irrespective of where those sales were sourced under those requirements. The commissioner may extend the time for filing the report under this section.

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

(C)(1) Beginning in 2006 and ending April 17, 2009, within seventy-five days after the thirty-first day of July each year and the thirty-first day of January of the following year, the tax commissioner shall determine for each county both of the following:

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

(b) The amount of taxes levied by those sections that would have been paid to the county by vendors licensed under division (A) of section 5739.17 of the Revised Code if the taxes had been collected in accordance with section 5739.035 of the Revised Code, as that section exists when the determination is made.

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

(2) In making the determination required by division (C)(1) of this section, the commissioner shall use the lesser of the county's tax rate in effect as of January 1, 2006, or the actual tax rate in effect for the six-month

period for which the compensation was calculated.

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

(D)(1) If the percentage difference calculated under division (C)(3) of this section for a county is ninety-six per cent or less, and the county is an impacted county under this section, the county shall receive compensation. Beginning in 2006 and ending May 1, 2009, within ninety days after the thirty-first day of July each year and the thirty-first day of January of the following year, the tax commissioner, in the next ensuing payment to be made under division (B)(1) of section 5739.21 of the Revised Code, shall in addition provide from the general revenue fund to such county compensation in the amount of ninety-eight per cent of the denominator calculated under division (C)(3) of this section, minus the numerator calculated under division (C)(3) of this section.

(2) A county that is entitled to compensation under division (D)(1) of this section may request an advance payment of that compensation. The commissioner shall adopt rules that establish the manner by which such county may make the request and the method the commissioner will use to determine the amount of the advance payment to be made to the county. Compensation provided under division (D)(1) of this section shall be adjusted accordingly to account for advance payments made under division (D)(2) of this section.

(E) If, under division (C)(1) of this section, the tax commissioner determines that a county received more taxes under the destination-based sourcing requirements than it would have received if taxes had been paid in accordance with section 5739.035 of the Revised Code, as that section existed when the determination was made, the county is a windfall county under this division. Beginning in 2006, within ninety days after the thirty-first day of July each year and the thirty-first day of January of the following year, the commissioner, in the next ensuing payment to be made under division (B)(1) of section 5739.21 of the Revised Code, shall reduce the amount to be returned to each windfall county by the total amount of excess taxes that would have been received by all windfall counties in proportion to the total amount needed to compensate counties under division (D) of this section.

(F) The commissioner shall make available to the public the determinations made under division (C) of this section, but any data

obtained from taxpayers under this section or that would identify those taxpayers shall remain confidential.

(G) There is hereby created the county compensation tax study committee. The committee shall consist of the following seven members: the tax commissioner, three members of the senate appointed by the president of the senate, and three members of the house of representatives appointed by the speaker of the house of representatives. The appointments shall be made not later than January 31, 2007. The tax commissioner shall be the chairperson of the committee and the department of taxation shall provide any information and assistance that is required by the committee to carry out its duties. The committee shall study the extent to which each county has been impacted by the destination-based sourcing requirements. Not later than June 30, 2007, the committee shall issue a report of its findings and shall make recommendations to the president of the senate and the speaker of the house of representatives, at which time the committee shall cease to exist.

Sec. 5741.03. (A) One hundred per cent of all money deposited into the state treasury under sections 5741.01 to 5741.22 of the Revised Code that is not required to be distributed as provided in division (B) ~~or (C)~~ of this section shall be credited to the general revenue fund.

(B) In any case where any county or transit authority has levied a tax or taxes pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, the tax commissioner shall, within forty-five days after the end of each month, determine and certify to the director of budget and management the amount of the proceeds of such tax or taxes from billings and assessments received during that month, or shown on tax returns or reports filed during that month, to be returned to the county or transit authority levying the tax or taxes, which amounts shall be determined in the manner provided in section 5739.21 of the Revised Code. The director of budget and management shall transfer, from the general revenue fund, to the permissive tax distribution fund created by division (B)(1) of section 4301.423 of the Revised Code and to the local sales tax administrative fund created by division (C) of section 5739.21 of the Revised Code, the amounts certified by the tax commissioner. The tax commissioner shall then, on or before the twentieth day of the month in which such certification is made, provide for payment of such respective amounts to the county treasurer or to the fiscal officer of the transit authority levying the tax or taxes. The amount transferred to the local sales tax administrative fund is for use by the tax commissioner in defraying costs the commissioner incurs in administering such taxes levied by a county or transit authority.

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

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

~~(2) The sum of the total sales and use tax revenue distributed to such counties and transit authorities in that calendar year plus the total revenue collected in that calendar year from the taxes levied under sections 5739.02 and 5741.02 of the Revised Code.~~

~~(D) Each county and transit authority shall receive a quarterly distribution each fiscal year from the revenue to be distributed as provided in division (C) of this section. The amount of the distribution for each such county and transit authority shall equal one fourth of a percentage of the revenue to be distributed in the fiscal year under that division. The percentage shall be computed by dividing the amount described in division (D)(1) by the amount described in division (D)(2) of this section:~~

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

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

Sec. 5741.05. (A) ~~Except as provided in division (B) of this section, a~~ A seller that collects the tax levied by sections 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code on transactions, other than sales of titled motor vehicles, titled watercraft, or titled outboard motors, shall determine under section 5739.033 or 5739.034 of the Revised Code the jurisdiction for which to collect the tax. A vendor or seller of motor vehicles, watercraft, or outboard motors required to be titled in this state shall collect the tax levied by section 5739.02 or 5741.02 of the Revised Code and the additional taxes levied by division (A)(1) of section 5741.021, division (A)(1) of section 5741.022, and division (A)(1) of section 5741.023 of the Revised Code for the consumer's county of residence as provided in section 1548.06 and division (B) of section 4505.06 of the Revised Code.

~~(B)(1) Divisions (B) and (C) of this section apply only if the tax commissioner makes the certification under section 5740.10 of the Revised~~

Code.

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

~~(3) Except as otherwise provided in division (B)(4) of this section, and notwithstanding sections 5741.02, 5741.021, 5741.022, and 5741.023 of the Revised Code, beginning January 1, 2008, a seller with total delivery sales in this state in calendar year 2007 and each calendar year thereafter of less than five hundred thousand dollars may elect to collect the tax due under this chapter at a rate equal to the sum of the tax levied under section 5741.02 of the Revised Code and the lowest combined rate of tax levied in any tax jurisdiction in this state under sections 5741.021, 5741.022, and 5741.023 of the Revised Code.~~

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

~~(C)(1) In each sale by a seller permitted to collect use tax under division (B) of this section, the seller shall clearly indicate on each invoice or other similar document provided to the purchaser at the time of the sale that the seller is authorized to collect use tax at the rate prescribed in division (B)(3) of this section.~~

~~(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.~~

~~(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.~~

~~(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.

SECTION 2. That existing sections 5703.70, 5739.03, 5739.033, 5739.034, 5739.24, 5741.03, and 5741.05 of the Revised Code are hereby repealed.

SECTION 3. That section 5739.24 of the Revised Code is hereby repealed effective May 1, 2009. No payments or reductions in payments required by division (D) of section 5739.24 of the Revised Code shall be effected after May 1, 2009. No request for an advance of the payment that, but for this act, would have been made after May 1, 2009, shall be honored.

SECTION 4. That the amendment by this act of sections 5703.70, 5739.033, 5739.034, 5741.03, and 5741.05 of the Revised Code shall take effect January 1, 2010.

SECTION 5. That a vendor may source sales in the manner prescribed by division (B)(1) of section 5739.033 of the Revised Code, as amended by this act, before the effective date specified in Section 4 of this act. A vendor that elects under this section to source sales in that manner before the effective date specified in Section 4 of this act shall begin sourcing sales in that manner on the first day of a month. Once a vendor sources sales in the manner so prescribed the vendor shall continue to source all sales described in that division as so prescribed.

SECTION 6. That sections 5739.035, 5739.123, and 5740.10 of the Revised Code are hereby repealed effective January 1, 2010.

SECTION 7. That the amendment by this act of section 5739.03 of the Revised Code shall take effect July 1, 2008.

SECTION 8. Section 5739.034 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 66 and Am. Sub. S.B. 26 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised

Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 9. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that destination-based sourcing is causing counties to lose sales tax revenues on sale orders made by residents of other counties, and an immediate conversion back to origin-based sourcing for intrastate sales is needed to prevent that loss. Therefore, this act shall go into immediate effect.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

Am. Sub. H. B. No. 429

127th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_