

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 429

Representative Gibbs

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A B I L L

To amend sections 5739.033 and 5739.24 of the Revised 1
Code and later to repeal section 5739.24 of the 2
Revised Code to authorize a vendor required to 3
utilize destination-based sourcing to determine 4
the appropriate sales tax jurisdiction to convert 5
to origin-based sourcing on or after January 1, 6
2009, and to discontinue compensation of impacted 7
counties for sales tax losses incurred under 8
destination-based sourcing. 9

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

Section 1. That sections 5739.033 and 5739.24 of the Revised 10
Code be amended to read as follows: 11

Sec. 5739.033. (A) Except as provided in division (B) of this 12
section, divisions (C) to (I) of this section apply to sales made 13
on and after January 1, 2008. Any vendor previously required to 14
comply with divisions (C) to (I) of this section and any vendor 15
that irrevocably elects to comply with divisions (C) to (I) of 16
this section for all of the vendor's sales and places of business 17
in this state shall continue to source its sales under those 18
divisions. 19

The amount of tax due pursuant to sections 5739.02, 5739.021, 20

5739.023, and 5739.026 of the Revised Code is the sum of the taxes 21
imposed pursuant to those sections at the sourcing location of the 22
sale as determined under this section or, if applicable, under 23
division (C) of section 5739.031 or section 5739.034 of the 24
Revised Code, or at the situs of the sale as determined under 25
section 5739.035 of the Revised Code. This section applies only to 26
a vendor's or seller's obligation to collect and remit sales taxes 27
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the 28
Revised Code or use taxes under section 5741.02, 5741.021, 29
5741.022, or 5741.023 of the Revised Code. Division (A) of this 30
section does not apply in determining the jurisdiction for which 31
sellers are required to collect the use tax under section 5741.05 32
of the Revised Code. This section does not affect the obligation 33
of a consumer to remit use taxes on the storage, use, or other 34
consumption of tangible personal property or on the benefit 35
realized of any service provided, to the jurisdiction of that 36
storage, use, or consumption, or benefit realized. 37

(B)(1) As used in this division: 38

(a) "Delivery sale" means the taxable sale of tangible 39
personal property or a service that is received by a consumer, or 40
a donee designated by the consumer, in a taxing jurisdiction that 41
is not the taxing jurisdiction in which the vendor has a fixed 42
place of business. 43

(b) "Agreement" has the same meaning as in section 5740.01 of 44
the Revised Code. 45

(c) "Governing board" has the same meaning as in section 46
5740.02 of the Revised Code. 47

(2) If the tax commissioner does not make the certification 48
under section 5740.10 of the Revised Code, a vendor that is not 49
required by division (A) of this section to situs sales under 50
divisions (C) to (I) of this section on the date of the 51

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, and divisions~~
~~(B)(3) to (5) of this section shall not apply to that vendor. On~~
~~or after January 1, 2009, a vendor required under division (A) of~~
~~this section to comply with divisions (C) to (I) of this section~~
~~may elect to situs its sales under section 5739.035 of the Revised~~
~~Code.~~

(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.

(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 83
receives tangible personal property or a service at a vendor's 84
place of business, the sale shall be sourced to that place of 85
business. 86

(2) When the tangible personal property or service is not 87
received at a vendor's place of business, the sale shall be 88
sourced to the location known to the vendor where the consumer or 89
the donee designated by the consumer receives the tangible 90
personal property or service, including the location indicated by 91
instructions for delivery to the consumer or the consumer's donee. 92

(3) If divisions (C)(1) and (2) of this section do not apply, 93
the sale shall be sourced to the location indicated by an address 94
for the consumer that is available from the vendor's business 95
records that are maintained in the ordinary course of the vendor's 96
business, when use of that address does not constitute bad faith. 97
98

(4) If divisions (C)(1), (2), and (3) of this section do not 99
apply, the sale shall be sourced to the location indicated by an 100
address for the consumer obtained during the consummation of the 101
sale, including the address associated with the consumer's payment 102
instrument, if no other address is available, when use of that 103
address does not constitute bad faith. 104

(5) If divisions (C)(1), (2), (3), and (4) of this section do 105
not apply, including in the circumstance where the vendor is 106
without sufficient information to apply any of those divisions, 107
the sale shall be sourced to the address from which tangible 108
personal property was shipped, or from which the service was 109
provided, disregarding any location that merely provided the 110
electronic transfer of the property sold or service provided. 111

(6) As used in division (C) of this section, "receive" means 112
taking possession of tangible personal property or making first 113

use of a service. "Receive" does not include possession by a 114
shipping company on behalf of a consumer. 115

(D)(1)(a) Notwithstanding divisions (C)(1) to (5) of this 116
section, a business consumer that is not a holder of a direct 117
payment permit granted under section 5739.031 of the Revised Code, 118
that purchases a digital good, computer software, except computer 119
software received in person by a business consumer at a vendor's 120
place of business, or a service, and that knows at the time of 121
purchase that such digital good, software, or service will be 122
concurrently available for use in more than one taxing 123
jurisdiction shall deliver to the vendor in conjunction with its 124
purchase an exemption certificate claiming multiple points of use, 125
or shall meet the requirements of division (D)(2) of this section. 126
On receipt of the exemption certificate claiming multiple points 127
of use, the vendor is relieved of its obligation to collect, pay, 128
or remit the tax due, and the business consumer must pay the tax 129
directly to the state. 130

(b) A business consumer that delivers the exemption 131
certificate claiming multiple points of use to a vendor may use 132
any reasonable, consistent, and uniform method of apportioning the 133
tax due on the digital good, computer software, or service that is 134
supported by the consumer's business records as they existed at 135
the time of the sale. The business consumer shall report and pay 136
the appropriate tax to each jurisdiction where concurrent use 137
occurs. The tax due shall be calculated as if the apportioned 138
amount of the digital good, computer software, or service had been 139
delivered to each jurisdiction to which the sale is apportioned 140
under this division. 141

(c) The exemption certificate claiming multiple points of use 142
shall remain in effect for all future sales by the vendor to the 143
business consumer until it is revoked in writing by the business 144
consumer, except as to the business consumer's specific 145

apportionment of a subsequent sale under division (D)(1)(b) of 146
this section and the facts existing at the time of the sale. 147

(2) When the vendor knows that a digital good, computer 148
software, or service sold will be concurrently available for use 149
by the business consumer in more than one jurisdiction, but the 150
business consumer does not provide an exemption certificate 151
claiming multiple points of use as required by division (D)(1) of 152
this section, the vendor may work with the business consumer to 153
produce the correct apportionment. Governed by the principles of 154
division (D)(1)(b) of this section, the vendor and business 155
consumer may use any reasonable, but consistent and uniform, 156
method of apportionment that is supported by the vendor's and 157
business consumer's books and records as they exist at the time 158
the sale is reported for purposes of the taxes levied under this 159
chapter. If the business consumer certifies to the accuracy of the 160
apportionment and the vendor accepts the certification, the vendor 161
shall collect and remit the tax accordingly. In the absence of bad 162
faith, the vendor is relieved of any further obligation to collect 163
tax on any transaction where the vendor has collected tax pursuant 164
to the information certified by the business consumer. 165

(3) When the vendor knows that the digital good, computer 166
software, or service will be concurrently available for use in 167
more than one jurisdiction, and the business consumer does not 168
have a direct pay permit and does not provide to the vendor an 169
exemption certificate claiming multiple points of use as required 170
in division (D)(1) of this section, or certification pursuant to 171
division (D)(2) of this section, the vendor shall collect and 172
remit the tax based on division (C) of this section. 173

(4) Nothing in this section shall limit a person's obligation 174
for sales or use tax to any state in which a digital good, 175
computer software, or service is concurrently available for use, 176
nor limit a person's ability under local, state, or federal law, 177

to claim a credit for sales or use taxes legally due and paid to 178
other jurisdictions. 179

(E) A person who holds a direct payment permit issued under 180
section 5739.031 of the Revised Code is not required to deliver an 181
exemption certificate claiming multiple points of use to a vendor. 182
But such permit holder shall comply with division (D)(2) of this 183
section in apportioning the tax due on a digital good, computer 184
software, or a service for use in business that will be 185
concurrently available for use in more than one taxing 186
jurisdiction. 187

(F)(1) Notwithstanding divisions (C)(1) to (5) of this 188
section, the consumer of direct mail that is not a holder of a 189
direct payment permit shall provide to the vendor in conjunction 190
with the sale either an exemption certificate claiming direct mail 191
prescribed by the tax commissioner, or information to show the 192
jurisdictions to which the direct mail is delivered to recipients. 193

(2) Upon receipt of such exemption certificate, the vendor is 194
relieved of all obligations to collect, pay, or remit the 195
applicable tax and the consumer is obligated to pay that tax on a 196
direct pay basis. An exemption certificate claiming direct mail 197
shall remain in effect for all future sales of direct mail by the 198
vendor to the consumer until it is revoked in writing. 199

(3) Upon receipt of information from the consumer showing the 200
jurisdictions to which the direct mail is delivered to recipients, 201
the vendor shall collect the tax according to the delivery 202
information provided by the consumer. In the absence of bad faith, 203
the vendor is relieved of any further obligation to collect tax on 204
any transaction where the vendor has collected tax pursuant to the 205
delivery information provided by the consumer. 206

(4) If the consumer of direct mail does not have a direct 207
payment permit and does not provide the vendor with either an 208

exemption certificate claiming direct mail or delivery information 209
as required by division (F)(1) of this section, the vendor shall 210
collect the tax according to division (C)(5) of this section. 211
Nothing in division (F)(4) of this section shall limit a 212
consumer's obligation to pay sales or use tax to any state to 213
which the direct mail is delivered. 214

(5) If a consumer of direct mail provides the vendor with 215
documentation of direct payment authority, the consumer shall not 216
be required to provide an exemption certificate claiming direct 217
mail or delivery information to the vendor. 218

(G) If the vendor provides lodging to transient guests as 219
specified in division (B)(2) of section 5739.01 of the Revised 220
Code, the sale shall be sourced to the location where the lodging 221
is located. 222

(H)(1) As used in this division and division (I) of this 223
section, "transportation equipment" means any of the following: 224

(a) Locomotives and railcars that are utilized for the 225
carriage of persons or property in interstate commerce. 226

(b) Trucks and truck-tractors with a gross vehicle weight 227
rating of greater than ten thousand pounds, trailers, 228
semi-trailers, or passenger buses that are registered through the 229
international registration plan and are operated under authority 230
of a carrier authorized and certificated by the United States 231
department of transportation or another federal authority to 232
engage in the carriage of persons or property in interstate 233
commerce. 234

(c) Aircraft that are operated by air carriers authorized and 235
certificated by the United States department of transportation or 236
another federal authority to engage in the carriage of persons or 237
property in interstate or foreign commerce. 238

(d) Containers designed for use on and component parts 239

attached to or secured on the items set forth in division 240
(H)(1)(a), (b), or (c) of this section. 241

(2) A sale, lease, or rental of transportation equipment 242
shall be sourced pursuant to division (C) of this section. 243

(I)(1) A lease or rental of tangible personal property that 244
does not require recurring periodic payments shall be sourced 245
pursuant to division (C) of this section. 246

(2) A lease or rental of tangible personal property that 247
requires recurring periodic payments shall be sourced as follows: 248

(a) In the case of a motor vehicle, other than a motor 249
vehicle that is transportation equipment, or an aircraft, other 250
than an aircraft that is transportation equipment, such lease or 251
rental shall be sourced as follows: 252

(i) An accelerated tax payment on a lease or rental taxed 253
pursuant to division (A)(2) of section 5739.02 of the Revised Code 254
shall be sourced to the primary property location at the time the 255
lease or rental is consummated. Any subsequent taxable charges on 256
the lease or rental shall be sourced to the primary property 257
location for the period in which the charges are incurred. 258

(ii) For a lease or rental taxed pursuant to division (A)(3) 259
of section 5739.02 of the Revised Code, each lease or rental 260
installment shall be sourced to the primary property location for 261
the period covered by the installment. 262

(b) In the case of a lease or rental of all other tangible 263
personal property, other than transportation equipment, such lease 264
or rental shall be sourced as follows: 265

(i) An accelerated tax payment on a lease or rental that is 266
taxed pursuant to division (A)(2) of section 5739.02 of the 267
Revised Code shall be sourced pursuant to division (C) of this 268
section at the time the lease or rental is consummated. Any 269

subsequent taxable charges on the lease or rental shall be sourced 270
to the primary property location for the period in which the 271
charges are incurred. 272

(ii) For a lease or rental that is taxed pursuant to division 273
(A)(3) of section 5739.02 of the Revised Code, the initial lease 274
or rental installment shall be sourced pursuant to division (C) of 275
this section. Each subsequent installment shall be sourced to the 276
primary property location for the period covered by the 277
installment. 278

(3) As used in division (I) of this section, "primary 279
property location" means an address for tangible personal property 280
provided by the lessee or renter that is available to the lessor 281
or owner from its records maintained in the ordinary course of 282
business, when use of that address does not constitute bad faith. 283

Sec. 5739.24. (A) As used in this section: 284

(1) "Destination-based sourcing requirements" has the same 285
meaning as in section 5739.123 of the Revised Code. 286

(2) "Impacted county" means a county having a population of 287
less than seventy-five thousand as of the decennial census of 2000 288
taken by the United States census bureau. 289

(3) "Master account holder" means a person that holds more 290
than one vendor's license under division (A) of section 5739.17 of 291
the Revised Code, operates in multiple tax jurisdictions under the 292
same ownership, and files or is required to file a consolidated 293
return under section 5739.12 of the Revised Code. 294

(4) "Tax jurisdiction" means a county or, if applicable, the 295
portion of a county in which a transit authority has territory. 296

(B)(1) Beginning in 2006 and ending January 31, 2009, within 297
thirty days after the thirtieth day of June and the thirty-first 298
day of December of each year, a master account holder that makes a 299

sale that is subject to the destination-based sourcing 300
requirements shall file with the tax commissioner a report that 301
details the total taxable sales it made for the prior six-month 302
period in each tax jurisdiction and at each fixed place of 303
business for which the master account holder holds or should hold 304
a license, irrespective of where those sales were sourced under 305
those requirements. The commissioner may extend the time for 306
filing the report under this section. 307

(2) If the report required by division (B)(1) of this section 308
is not timely filed by a master account holder, the tax 309
commissioner shall mail notice of a delinquent report to the 310
holder. In addition to any other penalties or additional charges 311
imposed under this chapter, the commissioner may impose a penalty 312
of up to fifty dollars for each fixed place of business of the 313
master account holder. If the report is filed within fifteen days 314
after the commissioner mails the delinquency notice, the penalty 315
may be remitted in full or in part by the commissioner. But if the 316
master account holder fails to file the report within fifteen days 317
after the commissioner mails the notice, the commissioner shall 318
impose a penalty of up to one hundred dollars for each fixed place 319
of business of the master account holder. This penalty may not be 320
remitted in full by the commissioner. A penalty imposed under this 321
division is subject to collection and assessment in the same 322
manner as any tax levied under this chapter. 323

(C)(1) Beginning in 2006 and ending April 17, 2009, within 324
seventy-five days after the thirty-first day of July each year and 325
the thirty-first day of January of the following year, the tax 326
commissioner shall determine for each county both of the 327
following: 328

(a) The amount of taxes reported on returns filed by all 329
vendors licensed under division (A) of section 5739.17 of the 330
Revised Code that were levied by sections 5739.021 and 5739.026 of 331

the Revised Code and were reported as due in accordance with the 332
destination-based sourcing requirements; 333

(b) The amount of taxes levied by those sections that would 334
have been paid to the county by vendors licensed under division 335
(A) of section 5739.17 of the Revised Code if the taxes had been 336
collected in accordance with section 5739.035 of the Revised Code. 337

The commissioner may make any adjustments that are necessary 338
to account for delinquent tax returns or reports. 339

(2) In making the determination required by division (C)(1) 340
of this section, the commissioner shall use the lesser of the 341
county's tax rate in effect as of January 1, 2006, or the actual 342
tax rate in effect for the six-month period for which the 343
compensation was calculated. 344

(3) The commissioner also shall calculate the percentage 345
difference between the amounts determined under divisions 346
(C)(1)(a) and (b) of this section by using a fraction, with the 347
amount determined under division (C)(1)(a) of this section in the 348
numerator, and the amount determined under division (C)(1)(b) of 349
this section in the denominator. 350

(D)(1) If the percentage difference calculated under division 351
(C)(3) of this section for a county is ninety-six per cent or 352
less, and the county is an impacted county under this section, the 353
county shall receive compensation. Beginning in 2006 and ending 354
May 1, 2009, within ninety days after the thirty-first day of July 355
each year and the thirty-first day of January of the following 356
year, the tax commissioner, in the next ensuing payment to be made 357
under division (B)(1) of section 5739.21 of the Revised Code, 358
shall in addition provide from the general revenue fund to such 359
county compensation in the amount of ninety-eight per cent of the 360
denominator calculated under division (C)(3) of this section, 361
minus the numerator calculated under division (C)(3) of this 362

section. 363

(2) A county that is entitled to compensation under division 364
(D)(1) of this section may request an advance payment of that 365
compensation. The commissioner shall adopt rules that establish 366
the manner by which such county may make the request and the 367
method the commissioner will use to determine the amount of the 368
advance payment to be made to the county. Compensation provided 369
under division (D)(1) of this section shall be adjusted 370
accordingly to account for advance payments made under division 371
(D)(2) of this section. 372

(E) If, under division (C)(1) of this section, the tax 373
commissioner determines that a county received more taxes under 374
the destination-based sourcing requirements than it would have 375
received if taxes had been paid in accordance with section 376
5739.035 of the Revised Code, the county is a windfall county 377
under this division. Beginning in 2006, within ninety days after 378
the thirty-first day of July each year and the thirty-first day of 379
January of the following year, the commissioner, in the next 380
ensuing payment to be made under division (B)(1) of section 381
5739.21 of the Revised Code, shall reduce the amount to be 382
returned to each windfall county by the total amount of excess 383
taxes that would have been received by all windfall counties in 384
proportion to the total amount needed to compensate counties under 385
division (D) of this section. 386

(F) The commissioner shall make available to the public the 387
determinations made under division (C) of this section, but any 388
data obtained from taxpayers under this section or that would 389
identify those taxpayers shall remain confidential. 390

(G) There is hereby created the county compensation tax study 391
committee. The committee shall consist of the following seven 392
members: the tax commissioner, three members of the senate 393
appointed by the president of the senate, and three members of the 394

house of representatives appointed by the speaker of the house of 395
representatives. The appointments shall be made not later than 396
January 31, 2007. The tax commissioner shall be the chairperson of 397
the committee and the department of taxation shall provide any 398
information and assistance that is required by the committee to 399
carry out its duties. The committee shall study the extent to 400
which each county has been impacted by the destination-based 401
sourcing requirements. Not later than June 30, 2007, the committee 402
shall issue a report of its findings and shall make 403
recommendations to the president of the senate and the speaker of 404
the house of representatives, at which time the committee shall 405
cease to exist. 406

Section 2. That existing sections 5739.033 and 5739.24 of the 407
Revised Code are hereby repealed. 408

Section 3. That section 5739.24 of the Revised Code is hereby 409
repealed effective May 1, 2009. No payments or reductions in 410
payments required by division (D) of section 5739.24 of the 411
Revised Code shall be effected after May 1, 2009. No request for 412
an advance of the payment that, but for this act, would have been 413
made after May 1, 2009, shall be honored. 414