

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**S. B. No. 160**

**Senator Amstutz**

**Cosponsors: Senators Schuring, Spada**

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**A B I L L**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~personal property or a service that is received by a consumer, or  
a donee designated by the consumer, in a taxing jurisdiction that  
is not the taxing jurisdiction in which the vendor has a fixed  
place of business.~~

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

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

~~(2)(a) A vendor with total delivery sales in calendar year  
2005 that are less than thirty million dollars may continue to  
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  
determines that such services are being so provided, the  
commissioner shall enter the determination in the commissioner's  
journal and shall provide notice of the determination on the  
department of taxation's official internet web site. If the  
commissioner makes such an entry in the journal, then a vendor  
with total delivery sales in calendar year 2006 that are less than  
five million dollars may continue to situs its sales under section  
5739.035 of the Revised Code from May 1, 2007, through December  
31, 2007.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(H)~~(F)(1) As used in this division and division ~~(I)~~(G) 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)~~(F)(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)~~(G)(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 523  
than an aircraft that is transportation equipment, such lease or 524  
rental shall be sourced as follows: 525

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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