

As Passed by the Senate

**127th General Assembly
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Sub. S. B. No. 160

Senator Amstutz

**Cosponsors: Senators Schuring, Spada, Sawyer, Miller, D., Mumper, Fedor,
Schuler, Stivers, Wilson, Harris**

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A B I L L

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

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

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

Sec. 5739.033. (A) Except as provided in division (B) of this 23
section, divisions (C) to (I) of this section apply to sales made 24
on and after ~~May 1, 2006~~. ~~Sales made before May 1, 2006, are~~ 25
~~subject to section 5739.035 of the Revised Code. On and after~~ 26
~~January 1, 2005, any~~ January 1, 2008. Any vendor ~~may previously~~ 27
required to comply with divisions (C) to (I) of this section and 28
any vendor that irrevocably elects ~~elects~~ to comply with divisions 29
(C) to (I) of this section for all of the vendor's sales and 30
places of business in this state shall continue to source its 31
sales under those divisions. 32

The amount of tax due pursuant to sections 5739.02, 5739.021, 33
5739.023, and 5739.026 of the Revised Code is the sum of the taxes 34
imposed pursuant to those sections at the sourcing location of the 35
sale as determined under this section or, if applicable, under 36
division (C) of section 5739.031 or section 5739.034 of the 37
Revised Code, or at the situs of the sale as determined under 38
section 5739.035 of the Revised Code. This section applies only to 39
a vendor's or seller's obligation to collect and remit sales taxes 40
under section 5739.02, 5739.021, 5739.023, or 5739.026 of the 41
Revised Code or use taxes under section 5741.02, 5741.021, 42
5741.022, or 5741.023 of the Revised Code. Division (A) of this 43
section does not apply in determining the jurisdiction for which 44
sellers are required to collect the use tax under section 5741.05 45
of the Revised Code. This section does not affect the obligation 46
of a consumer to remit use taxes on the storage, use, or other 47
consumption of tangible personal property or on the benefit 48
realized of any service provided, to the jurisdiction of that 49
storage, use, or consumption, or benefit realized. 50

(B)(1) As used in this division: 51

(a) "Delivery sale" means the taxable sale of tangible 52
personal property or a service that is received by a consumer, or 53
a donee designated by the consumer, in a taxing jurisdiction that 54
is not the taxing jurisdiction in which the vendor has a fixed 55
place of business. 56

(b) "Agreement" has the same meaning as in section 5740.01 of 57
the Revised Code. 58

(c) "Governing board" has the same meaning as in section 59
5740.02 of the Revised Code. 60

~~(2)(a) A If the tax commissioner does not make the 61
certification under section 5740.10 of the Revised Code, a vendor 62
that is not required by division (A) of this section to situs 63
sales under divisions (C) to (I) of this section on the date of 64
the commissioner's certification may continue after that date to 65
situs its sales under section 5739.035 of the Revised Code unless 66
it is required, under division (B)(5) of this section, to situs 67
its sales under divisions (C) to (I) of this section. 68~~

~~(3) Except as otherwise provided in divisions (B)(4) and (5) 69
of this section, a vendor with total delivery sales within this 70
state in prior calendar year 2005 that are years, beginning with 71
calendar year 2007, of less than thirty million five hundred 72
thousand dollars may continue to situs its sales under section 73
5739.035 of the Revised Code from May 1, 2006, through April 30, 74
2007, except that, if the tax commissioner does not enter a 75
determination in the commissioner's journal under division 76
(B)(2)(b) of this section, those dates shall be May 1, 2006, 77
through December 31, 2007. 78~~

~~(b) On or before February 1, 2007, the tax commissioner shall 79
determine whether certified service provider services are being 80
provided by the governing board of the streamlined sales and use 81~~

~~tax agreement for all delivery sales. If the commissioner 82
determines that such services are being so provided, the 83
commissioner shall enter the determination in the commissioner's 84
journal and shall provide notice of the determination on the 85
department of taxation's official internet web site. If the 86
commissioner makes such an entry in the journal, then a vendor 87
with total delivery sales in calendar year 2006 that are less than 88
five million dollars may continue to situs its sales under section 89
5739.035 of the Revised Code from May 1, 2007, through December 90
31, 2007. 91~~

~~(3) Beginning January 1, 2008, all vendors shall source their 92
sales under divisions (C) to (I) of this section. 93~~

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

~~(5) A vendor permitted under division (B)(3) of this section 101
to situs its sales under section 5739.035 of the Revised Code that 102
fails to provide, absent a clerical error, the notices required 103
under division (I)(1) of section 5739.035 of the Revised Code 104
shall situs all subsequent sales as required under divisions (C) 105
to (I) of this section. 106~~

~~(C) Except for sales, other than leases, of titled motor 107
vehicles, titled watercraft, or titled outboard motors as provided 108
in section 5741.05 of the Revised Code, or as otherwise provided 109
in this section and section 5739.034 of the Revised Code, all 110
sales shall be sourced as follows: 111~~

~~(1) If the consumer or a donee designated by the consumer 112~~

receives tangible personal property or a service at a vendor's 113
place of business, the sale shall be sourced to that place of 114
business. 115

(2) When the tangible personal property or service is not 116
received at a vendor's place of business, the sale shall be 117
sourced to the location known to the vendor where the consumer or 118
the donee designated by the consumer receives the tangible 119
personal property or service, including the location indicated by 120
instructions for delivery to the consumer or the consumer's donee. 121

(3) If divisions (C)(1) and (2) of this section do not apply, 122
the sale shall be sourced to the location indicated by an address 123
for the consumer that is available from the vendor's business 124
records that are maintained in the ordinary course of the vendor's 125
business, when use of that address does not constitute bad faith. 126
127

(4) If divisions (C)(1), (2), and (3) of this section do not 128
apply, the sale shall be sourced to the location indicated by an 129
address for the consumer obtained during the consummation of the 130
sale, including the address associated with the consumer's payment 131
instrument, if no other address is available, when use of that 132
address does not constitute bad faith. 133

(5) If divisions (C)(1), (2), (3), and (4) of this section do 134
not apply, including in the circumstance where the vendor is 135
without sufficient information to apply any of those divisions, 136
the sale shall be sourced to the address from which tangible 137
personal property was shipped, or from which the service was 138
provided, disregarding any location that merely provided the 139
electronic transfer of the property sold or service provided. 140

(6) As used in division (C) of this section, "receive" means 141
taking possession of tangible personal property or making first 142
use of a service. "Receive" does not include possession by a 143

shipping company on behalf of a consumer. 144

(D)(1)(a) Notwithstanding divisions (C)(1) to (5) of this 145
section, a business consumer that is not a holder of a direct 146
payment permit granted under section 5739.031 of the Revised Code, 147
that purchases a digital good, computer software, except computer 148
software received in person by a business consumer at a vendor's 149
place of business, or a service, and that knows at the time of 150
purchase that such digital good, software, or service will be 151
concurrently available for use in more than one taxing 152
jurisdiction shall deliver to the vendor in conjunction with its 153
purchase an exemption certificate claiming multiple points of use, 154
or shall meet the requirements of division (D)(2) of this section. 155
On receipt of the exemption certificate claiming multiple points 156
of use, the vendor is relieved of its obligation to collect, pay, 157
or remit the tax due, and the business consumer must pay the tax 158
directly to the state. 159

(b) A business consumer that delivers the exemption 160
certificate claiming multiple points of use to a vendor may use 161
any reasonable, consistent, and uniform method of apportioning the 162
tax due on the digital good, computer software, or service that is 163
supported by the consumer's business records as they existed at 164
the time of the sale. The business consumer shall report and pay 165
the appropriate tax to each jurisdiction where concurrent use 166
occurs. The tax due shall be calculated as if the apportioned 167
amount of the digital good, computer software, or service had been 168
delivered to each jurisdiction to which the sale is apportioned 169
under this division. 170

(c) The exemption certificate claiming multiple points of use 171
shall remain in effect for all future sales by the vendor to the 172
business consumer until it is revoked in writing by the business 173
consumer, except as to the business consumer's specific 174
apportionment of a subsequent sale under division (D)(1)(b) of 175

this section and the facts existing at the time of the sale. 176

(2) When the vendor knows that a digital good, computer 177
software, or service sold will be concurrently available for use 178
by the business consumer in more than one jurisdiction, but the 179
business consumer does not provide an exemption certificate 180
claiming multiple points of use as required by division (D)(1) of 181
this section, the vendor may work with the business consumer to 182
produce the correct apportionment. Governed by the principles of 183
division (D)(1)(b) of this section, the vendor and business 184
consumer may use any reasonable, but consistent and uniform, 185
method of apportionment that is supported by the vendor's and 186
business consumer's books and records as they exist at the time 187
the sale is reported for purposes of the taxes levied under this 188
chapter. If the business consumer certifies to the accuracy of the 189
apportionment and the vendor accepts the certification, the vendor 190
shall collect and remit the tax accordingly. In the absence of bad 191
faith, the vendor is relieved of any further obligation to collect 192
tax on any transaction where the vendor has collected tax pursuant 193
to the information certified by the business consumer. 194

(3) When the vendor knows that the digital good, computer 195
software, or service will be concurrently available for use in 196
more than one jurisdiction, and the business consumer does not 197
have a direct pay permit and does not provide to the vendor an 198
exemption certificate claiming multiple points of use as required 199
in division (D)(1) of this section, or certification pursuant to 200
division (D)(2) of this section, the vendor shall collect and 201
remit the tax based on division (C) of this section. 202

(4) Nothing in this section shall limit a person's obligation 203
for sales or use tax to any state in which a digital good, 204
computer software, or service is concurrently available for use, 205
nor limit a person's ability under local, state, or federal law, 206
to claim a credit for sales or use taxes legally due and paid to 207

other jurisdictions. 208

(E) A person who holds a direct payment permit issued under 209
section 5739.031 of the Revised Code is not required to deliver an 210
exemption certificate claiming multiple points of use to a vendor. 211
But such permit holder shall comply with division (D)(2) of this 212
section in apportioning the tax due on a digital good, computer 213
software, or a service for use in business that will be 214
concurrently available for use in more than one taxing 215
jurisdiction. 216

(F)(1) Notwithstanding divisions (C)(1) to (5) of this 217
section, the consumer of direct mail that is not a holder of a 218
direct payment permit shall provide to the vendor in conjunction 219
with the sale either an exemption certificate claiming direct mail 220
prescribed by the tax commissioner, or information to show the 221
jurisdictions to which the direct mail is delivered to recipients. 222

(2) Upon receipt of such exemption certificate, the vendor is 223
relieved of all obligations to collect, pay, or remit the 224
applicable tax and the consumer is obligated to pay that tax on a 225
direct pay basis. An exemption certificate claiming direct mail 226
shall remain in effect for all future sales of direct mail by the 227
vendor to the consumer until it is revoked in writing. 228

(3) Upon receipt of information from the consumer showing the 229
jurisdictions to which the direct mail is delivered to recipients, 230
the vendor shall collect the tax according to the delivery 231
information provided by the consumer. In the absence of bad faith, 232
the vendor is relieved of any further obligation to collect tax on 233
any transaction where the vendor has collected tax pursuant to the 234
delivery information provided by the consumer. 235

(4) If the consumer of direct mail does not have a direct 236
payment permit and does not provide the vendor with either an 237
exemption certificate claiming direct mail or delivery information 238

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

(5) If a consumer of direct mail provides the vendor with 244
documentation of direct payment authority, the consumer shall not 245
be required to provide an exemption certificate claiming direct 246
mail or delivery information to the vendor. 247

(G) If the vendor provides lodging to transient guests as 248
specified in division (B)(2) of section 5739.01 of the Revised 249
Code, the sale shall be sourced to the location where the lodging 250
is located. 251

(H)(1) As used in this division and division (I) of this 252
section, "transportation equipment" means any of the following: 253

(a) Locomotives and railcars that are utilized for the 254
carriage of persons or property in interstate commerce. 255

(b) Trucks and truck-tractors with a gross vehicle weight 256
rating of greater than ten thousand pounds, trailers, 257
semi-trailers, or passenger buses that are registered through the 258
international registration plan and are operated under authority 259
of a carrier authorized and certificated by the United States 260
department of transportation or another federal authority to 261
engage in the carriage of persons or property in interstate 262
commerce. 263

(c) Aircraft that are operated by air carriers authorized and 264
certificated by the United States department of transportation or 265
another federal authority to engage in the carriage of persons or 266
property in interstate or foreign commerce. 267

(d) Containers designed for use on and component parts 268
attached to or secured on the items set forth in division 269

(H)(1)(a), (b), or (c) of this section.	270
(2) A sale, lease, or rental of transportation equipment shall be sourced pursuant to division (C) of this section.	271 272
(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.	273 274 275
(2) A lease or rental of tangible personal property that requires recurring periodic payments shall be sourced as follows:	276 277
(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:	278 279 280 281
(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.	282 283 284 285 286 287
(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.	288 289 290 291
(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:	292 293 294
(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	295 296 297 298 299

to the primary property location for the period in which the 300
charges are incurred. 301

(ii) For a lease or rental that is taxed pursuant to division 302
(A)(3) of section 5739.02 of the Revised Code, the initial lease 303
or rental installment shall be sourced pursuant to division (C) of 304
this section. Each subsequent installment shall be sourced to the 305
primary property location for the period covered by the 306
installment. 307

(3) As used in division (I) of this section, "primary 308
property location" means an address for tangible personal property 309
provided by the lessee or renter that is available to the lessor 310
or owner from its records maintained in the ordinary course of 311
business, when use of that address does not constitute bad faith. 312

Sec. 5739.035. This section only applies to sales that ~~are~~ 313
~~required to~~ may be sitused under this section pursuant to division 314
~~(A) or~~ (B) of section 5739.033 of the Revised Code. 315

(A) Except as otherwise provided in this section, the situs 316
of all sales is the vendor's place of business. 317

(1) If the consumer or the consumer's agent takes possession 318
of the tangible personal property at a place of business of the 319
vendor where the purchase contract or agreement was made, the 320
situs of the sale is that place of business. 321

(2) If the consumer or the consumer's agent takes possession 322
of the tangible personal property other than at a place of 323
business of the vendor, or takes possession at a warehouse or 324
similar facility of the vendor, the situs of the sale is the 325
vendor's place of business where the purchase contract or 326
agreement was made or the purchase order was received. 327

(3) If the vendor provides a service specified in division 328
(B)(3)(a), (b), (c), (d), (n), (o), (q), (r), or (s) of section 329

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

(B) If the vendor is a transient vendor as specified in 335
division (B) of section 5739.17 of the Revised Code, the situs of 336
the sale is the vendor's temporary place of business or, if the 337
transient vendor is the lessor of titled motor vehicles, titled 338
watercraft, or titled outboard motors, at the location where the 339
lessee keeps the leased property. 340

(C) If the vendor makes sales of tangible personal property 341
from a stock of goods carried in a motor vehicle, from which the 342
purchaser makes selection and takes possession, or from which the 343
vendor sells tangible personal property the quantity of which has 344
not been determined prior to the time the purchaser takes 345
possession, the situs of the sale is the location of the motor 346
vehicle when the sale is made. 347

(D) If the vendor is a delivery vendor as specified in 348
division (D) of section 5739.17 of the Revised Code, the situs of 349
the sale is the place where the tangible personal property is 350
delivered, where the leased property is used, or where the service 351
is performed or received. 352

(E) If the vendor provides a service specified in division 353
(B)(3)(e), (g), (h), (j), (k), (l), (m), (p), or (t) of section 354
5739.01 of the Revised Code, the situs of the sale is the location 355
of the consumer where the service is performed or received. 356

(F) If the vendor provides lodging to transient guests as 357
specified in division (B)(2) of section 5739.01 of the Revised 358
Code, the situs of the sale is the location where the lodging is 359
located. 360

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

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

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

(1) In each delivery sale by a vendor permitted to situs its sales under this section, the vendor shall clearly indicate on the invoice or other similar document provided to the purchaser at the time of the sale that the vendor is a vendor permitted to situs its sales under this section.

(2) A purchaser that receives tangible personal property or services in a delivery sale from a vendor permitted to situs its sales under this section may claim a refund of the tax the vendor collected and remitted on the sale in an amount equal to the excess of the tax collected and remitted over the tax that would

have been due if the sale had been situated to the tax jurisdiction 393
in which the purchaser received the property or service. 394

A refund is authorized under this division only if the 395
invoice or other similar document provided to the purchaser at the 396
time of the sale includes the notice required under division 397
(I)(1) of this section. 398

Refunds shall be filed directly with the tax commissioner and 399
claimed in the manner prescribed by section 5739.07 of the Revised 400
Code. 401

(3) A purchaser of tangible personal property from a vendor 402
permitted to situs its sales under this section that removes the 403
property from the tax jurisdiction in which the resident received 404
the property is liable for additional tax in an amount equal to 405
the excess of the tax that would have been due on the sale if the 406
sale had been situated to the tax jurisdiction to which the 407
purchaser removed the property over the tax that the vendor 408
collected and remitted on the sale. 409

(4) Nothing in this section relieves a person claiming to be 410
authorized to situs sales under this section, but not so 411
authorized, from liability for tax, penalty, interest, or 412
additional charges imposed under this chapter for failure to 413
collect the amount of tax lawfully due applying the situsing 414
provisions of divisions (C) to (I) of section 5739.033 of the 415
Revised Code. 416

(5) For the purposes of division (I) of this section, 417
"delivery sale" has the same meaning as in section 5739.033 of the 418
Revised Code, and "tax jurisdiction" has the same meaning as in 419
section 5739.24 of the Revised Code. 420

Sec. 5739.123. (A) As used in this section, 421
"destination-based sourcing requirements" means the manner in 422

which sales are required to be sourced under divisions (C) to (I) 423
of section 5739.033 of the Revised Code. 424

(B) A vendor who holds a license issued ~~prior to May 1, 2006,~~ 425
under division (A) of section 5739.17 of the Revised Code may 426
apply for temporary compensation to assist the vendor in complying 427
with the destination-based sourcing requirements for the first six 428
months those sourcing requirements become applicable to the vendor 429
under section 5739.033 of the Revised Code. The vendor shall file 430
the application in accordance with division (C) of this section. 431
The compensation shall be the actual amount of tax collected per 432
county for each month of the six-month period, not to exceed 433
twenty-five dollars per county per month, for sales of tangible 434
personal property delivered to each county in which the vendor 435
does not have a fixed place of business and does not, or is not 436
required to, hold a license issued under division (A) of section 437
5739.17 of the Revised Code for that business. Only amounts paid 438
by the vendor for which the vendor is eligible for a discount 439
under division (B) of section 5739.12 of the Revised Code and that 440
are shown on returns filed during that six-month period shall be 441
considered in calculating the compensation. In no event shall a 442
vendor receive compensation that exceeds its total cost of 443
complying with the destination-based sourcing requirements. For 444
purposes of the six-month compensation period, a partial month 445
shall be considered a month. 446

(C) A vendor that applies for compensation under this section 447
shall file an application with the tax commissioner on a form 448
prescribed by the commissioner. The application shall be filed 449
within sixty days after the end of the reporting period that 450
includes the last day of the last month of the six-month period 451
for which the vendor is requesting compensation. The commissioner 452
shall determine the amount of compensation to which the vendor is 453
entitled, and if that amount is equal to or greater than the 454

amount claimed on the application, the commissioner shall certify 455
that amount to the director of budget and management and the 456
treasurer of state for payment from the general revenue fund. If 457
the commissioner determines that the amount of compensation to 458
which the vendor is entitled is less than the amount claimed on 459
the vendor's application, the commissioner shall proceed in 460
accordance with section 5703.70 of the Revised Code. 461

(D) The compensation provided under this section shall not 462
reduce the amount required to be returned to counties and transit 463
authorities under section 5739.21 of the Revised Code. 464

Sec. 5740.10. (A) As used in this section, "delivery sale" 465
has the same meaning as in section 5739.033 of the Revised Code. 466

(B) It is the intent of the General Assembly for this state 467
to become a full member in the streamlined sales and use tax 468
agreement to enhance collection of the taxes imposed under 469
Chapters 5739. and 5741. of the Revised Code by remote multi-state 470
sellers. This state's participation has been jeopardized, however, 471
because the agreement does not resolve issues relating to the 472
situsing of certain sales and because of the impact the agreement 473
has on businesses located within and outside this state that have 474
annual delivery sales in this state of less than five hundred 475
thousand dollars. 476

If the tax commissioner determines, on or before October 20, 477
2007, that the agreement has been amended or interpreted by the 478
streamlined sales tax governing board to allow, beginning January 479
1, 2008, a vendor with total annual delivery sales within this 480
state of less than five hundred thousand dollars in a prior 481
calendar year, beginning with calendar year 2007, to situs its 482
sales under section 5739.035 of the Revised Code, the commissioner 483
shall certify that determination by journal entry on or before 484
that date, shall provide notice of the determination on the 485

department of taxation's web site, and shall notify vendors and 486
sellers the commissioner reasonably believes to be affected by the 487
certification. 488

Sec. 5741.03. (A) ~~Four and two tenths~~ One hundred per cent of 489
all money deposited into the state treasury under sections 5741.01 490
to 5741.22 of the Revised Code that is not required to be 491
distributed as provided in division (B) or (C) of this section 492
shall be credited to ~~the local government fund for distribution in~~ 493
~~accordance with section 5747.50 of the Revised Code, six tenths of~~ 494
~~one per cent shall be credited to the local government revenue~~ 495
~~assistance fund for distribution in accordance with section~~ 496
~~5747.61 of the Revised Code, and ninety five and two tenths per~~ 497
~~cent shall be credited to the general revenue fund.~~ 498

(B) In any case where any county or transit authority has 499
levied a tax or taxes pursuant to section 5741.021, 5741.022, or 500
5741.023 of the Revised Code, the tax commissioner shall, within 501
forty-five days after the end of each month, determine and certify 502
to the director of budget and management the amount of the 503
proceeds of such tax or taxes from billings and assessments 504
received during that month, or shown on tax returns or reports 505
filed during that month, to be returned to the county or transit 506
authority levying the tax or taxes, which amounts shall be 507
determined in the manner provided in section 5739.21 of the 508
Revised Code. The director of budget and management shall 509
transfer, from the ~~same funds and in the same proportions~~ 510
~~specified in division (A) of this section~~ general revenue fund, to 511
the permissive tax distribution fund created by division (B)(1) of 512
section 4301.423 of the Revised Code and to the local sales tax 513
administrative fund created by division ~~(B)~~(C) of section 5739.21 514
of the Revised Code, the amounts certified by the tax 515
commissioner. The tax commissioner shall then, on or before the 516
twentieth day of the month in which such certification is made, 517

provide for payment of such respective amounts to the county 518
treasurer or to the fiscal officer of the transit authority 519
levying the tax or taxes. The amount transferred to the local 520
sales tax administrative fund is for use by the tax commissioner 521
in defraying costs the commissioner incurs in administering such 522
taxes levied by a county or transit authority. 523

(C) Of the revenue deposited into the state treasury from 524
taxes paid under division (B) of section 5741.05 of the Revised 525
Code, a percentage shall be distributed each fiscal year to all 526
counties and transit authorities that levy a tax under section 527
5739.021, 5739.023, or 5739.026 of the Revised Code. The 528
percentage to be distributed each fiscal year shall be computed by 529
dividing the amount described in division (C)(1) by the amount 530
described in division (C)(2) of this section: 531

(1) The total sales and use tax revenue distributed to 532
counties and transit authorities in the calendar year that ended 533
in the preceding fiscal year; 534

(2) The sum of the total sales and use tax revenue 535
distributed to such counties and transit authorities in that 536
calendar year plus the total revenue collected in that calendar 537
year from the taxes levied under sections 5739.02 and 5741.02 of 538
the Revised Code. 539

(D) Each county and transit authority shall receive a 540
quarterly distribution each fiscal year from the revenue to be 541
distributed as provided in division (C) of this section. The 542
amount of the distribution for each such county and transit 543
authority shall equal one-fourth of a percentage of the revenue to 544
be distributed in the fiscal year under that division. The 545
percentage shall be computed by dividing the amount described in 546
division (D)(1) by the amount described in division (D)(2) of this 547
section: 548

(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; 549
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(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. 553
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Sec. 5741.05. (A) Beginning January 1, 2005 Except as provided in division (B) of this section, 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. 556
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(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. 571
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(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. 574
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(3) Except as otherwise provided in division (B)(4) of this section, and notwithstanding sections 5741.02, 5741.021, 5741.022, 578
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and 5741.023 of the Revised Code, beginning January 1, 2008, a 580
seller with total delivery sales in this state in calendar year 581
2007 and each calendar year thereafter of less than five hundred 582
thousand dollars may elect to collect the tax due under this 583
chapter at a rate equal to the sum of the tax levied under section 584
5741.02 of the Revised Code and the lowest combined rate of tax 585
levied in any tax jurisdiction in this state under sections 586
5741.021, 5741.022, and 5741.023 of the Revised Code. 587

(4) Once a seller has total delivery sales in this state of 588
five hundred thousand dollars or more for a prior calendar year, 589
the seller shall source its sales pursuant to division (A) of this 590
section regardless of the amount of the seller's total delivery 591
sales in future years. 592

(C)(1) In each sale by a seller permitted to collect use tax 593
under division (B) of this section, the seller shall clearly 594
indicate on each invoice or other similar document provided to the 595
purchaser at the time of the sale that the seller is authorized to 596
collect use tax at the rate prescribed in division (B)(3) of this 597
section. 598

(2) If a purchaser purchases tangible personal property from 599
a seller permitted to collect use tax pursuant to division (B) of 600
this section and pays the tax due under that division to the 601
seller, no assessment may be made against the purchaser for 602
additional tax due under section 5741.021, 5741.022, or 5741.023 603
of the Revised Code unless the purchaser subsequently removes the 604
property from the tax jurisdiction in which the resident received 605
the property to another tax jurisdiction with a higher tax rate. 606

(3) Nothing in this section relieves a person that claims to 607
be authorized to collect the tax as provided in division (B) of 608
this section, but that is not so authorized, from liability for 609
tax, penalties, interest, or additional charges imposed under this 610
chapter for failure to collect the amount of tax lawfully due 611

applying the situsing provisions of division (A) of this section. 612

(D) A vendor or seller is not responsible for collecting or 613
remitting additional tax if a consumer subsequently stores, uses, 614
or consumes the tangible personal property or service in another 615
jurisdiction with a rate of tax imposed by sections 5741.02, 616
5741.021, 5741.022, or 5741.023 of the Revised Code that is higher 617
than the amount collected by the vendor or seller pursuant to 618
Chapter 5739. or 5741. of the Revised Code. 619

Section 2. That existing sections 5739.033, 5739.035, 620
5739.123, 5741.03, and 5741.05 of the Revised Code are hereby 621
repealed. 622

Section 3. Section 5739.035 of the Revised Code is presented 623
in this act as a composite of the section as amended by both Am. 624
Sub. H.B. 66 and Am. Sub. S.B. 26 of the 126th General Assembly. 625
The General Assembly, applying the principle stated in division 626
(B) of section 1.52 of the Revised Code that amendments are to be 627
harmonized if reasonably capable of simultaneous operation, finds 628
that the composite is the resulting version of the section in 629
effect prior to the effective date of the section as presented in 630
this act. 631