

**IN THE SUPREME COURT OF OHIO  
Appeal From the Ohio Board of Tax Appeals**

FREUDENBERG NOK GENERAL  
PARTNERSHIP,

Appellee,

v.

RICHARD A. LEVIN, TAX  
COMMISSIONER OF OHIO,

Appellant.

Case No. 2010-866

Appeal from BTA  
Case Nos. 2006-K-1556 and 1558

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**MERIT BRIEF OF APPELLANT**

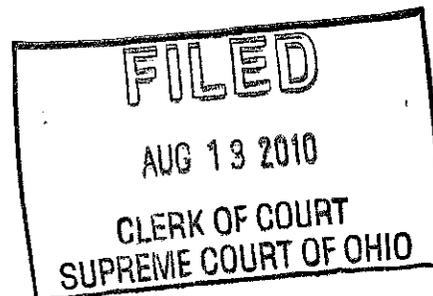
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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....iv

I. STATEMENT OF CASE AND FACTS.....1

II. LAW AND ARGUMENT.....5

Proposition of Law No. 1: Under the third threshold eligibility condition of the R.C. 5739.02(B)(42)(j) sales tax exemption, in order for a purchased item of warehousing equipment to qualify for exemption, the warehousing equipment must be used in connection with merchandise held at the warehouse for retail sale to end-user purchasers .....5

A. The tax exemption issue .....5

B. The BTA’s broad expansion of the (B)(42)(j) exemption is unreasonable and unlawful because, in violation of basic rules of statutory interpretation, the BTA’s reading fails to interpret the term “consumers” as contained in (B)(35)’s definition of “direct marketing” in the context of its general usage throughout R.C. Chapters 5739 and 5741 and in the context of the full texts of (B)(35) and (B)(42)(j) .....7

1. The BTA failed to adhere to the “strict construction” principle of statutory interpretation and failed to give due deference to the Commissioner’s administrative interpretation, under which the term “consumer” as contained in the R.C. 5739.02(B)(35) definition of “direct marketing” is given its usual meaning as that term is generally used in Ohio retail sales and use tax law .....7

2. The BTA erred by failing to interpret the term “consumers” as set forth in (B)(35)’s definition of “direct marketing” in the context of the whole statute. Reading the term “consumers” in the context of the whole statute establishes that the Commissioner’s interpretation as the one intended and expressed by the General Assembly in enacting the (B)(35) definition of “direct marketing.” .....10

3. Reading the (B)(35) definition in the context of the (B)(42)(j) exemption as a whole confirms that the term “consumers” means retail purchasers .....12

Proposition of Law No. 2: Items of sample merchandise and other tangible personal property that relate only in some preliminary, preparatory, or ancillary way to tangible personal property that is “used \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory” do not qualify for the R.C. 5739.02(B)(42)(j) warehousing equipment exemption ..... 14

III. CONCLUSION ..... 19

APPENDIX

A. Appellant Commissioner’s Notice of Appeal to the Ohio Supreme Court..... Appx. 1

B. Ohio Revised Code 5717.04..... Appx. 25

C. Ohio Revised Code, Chapter 5739: Sales Tax

- 1. 5739.01 ..... Appx. 27
- 2. 5739.011 ..... Appx. 41
- 3. 5739.012 ..... Appx. 44
- 4. 5739.02 ..... Appx. 46
- 5. 5739.021 ..... Appx. 62
- 6. 5739.022 ..... Appx. 65
- 7. 5739.023 ..... Appx. 67
- 8. 5739.026 ..... Appx. 69
- 9. 5739.027 ..... Appx. 73
- 10. 5739.029 ..... Appx. 75
- 11. 5739.0210 ..... Appx. 77
- 12. 5739.03 ..... Appx. 79
- 13. 5739.031 ..... Appx. 82
- 14. 5739.033 ..... Appx. 84
- 15. 5739.05 ..... Appx. 88
- 16. 5739.10 ..... Appx. 90
- 17. 5739.12 ..... Appx. 92
- 18. 5739.121 ..... Appx. 94
- 19. 5739.13 ..... Appx. 96
- 20. 5739.15 ..... Appx. 98
- 21. 5739.16 ..... Appx. 100
- 22. 5739.17 ..... Appx. 102
- 23. 5739.26 ..... Appx. 105
- 24. 5739.29 ..... Appx. 106

D. Ohio Revised Code, Chapter 5741: Use Tax ..... Appx. 107

1. 5741.01 ..... Appx. 107

2. 5741.02 .....	Appx. 110
3. 5741.04 .....	Appx. 114
4. 5741.05 .....	Appx. 115
5. 5741.06 .....	Appx. 116
6. 5741.12 .....	Appx. 118
7. 5741.121 .....	Appx. 119
8. 5741.13 .....	Appx. 121
9. 5741.16 .....	Appx. 122
10. 5741.17 .....	Appx. 123
11. 5741.19 .....	Appx. 124
12. 5741.21 .....	Appx. 125
E. Excerpt from the Ohio Legislative Service Commission's Analysis of Am. Sub. H.B. 904 Regarding the Nonappropriation Provisions of H.B. 904 .....	Appx. 127
F. History of ORC 5739.02(B)(35)	
1. G.C. 5546-1, 116 Ohio Laws, Pt. II, 69-70, 82, 83 (as enacted in Act of Dec. 20, 1935) .....	Appx. 129
2. R.C. 5739.01(E)(2), 144 Ohio Laws, Pt. IV, v H 904 (as enacted in Act of Jan. 01, 1993), .....	Appx. 134
3. R.C. 5739.02(B)(37), 144 Ohio Laws, Pt. IV, v H 904 (as enacted in Act of Jan 01, 1993) .....	Appx. 149
4. R.C. 5739.02(B)(36) 148 Ohio Laws, Pt. III, v H 612 (as enacted in Act of Sept. 29, 2000).....	Appx. 158
5. R.C. 5739.02(B)(35) 151 Ohio Laws, v H 66 (as enacted in Act of June 30, 2005) .....	Appx. 160
G. History of ORC 5739.02(B)(42)(j)	
1 R.C. 5739.01(E)(12) 145 Ohio Laws, Pt. IV, v H 715 (as enacted in Act of July 22, 1995) .....	Appx. 170
2 R.C. 5739.02(B)(42)(j) 151 Ohio Laws, v H 66 (as enacted in Act of June 30, 2005) .....	Appx. 178

## TABLE OF AUTHORITIES

### CASES

<i>Canton Malleable Iron Co. v. Porterfield</i> (1972), 30 Ohio St.2d 163 .....	8
<i>Commerce &amp; Industry Ins. Co. v. Toledo</i> (1989), 45 Ohio St.3d 96 .....	10
<i>D.A.B.E., Inc. v. Toledo-Lucas County Board of Health</i> , 96 Ohio St.3d 250, 2002-Ohio-4172 .....	12
<i>Freudenberg NKO General Partnership v. Levin</i> (Apr. 13, 2010), BTA Case Nos. 2008-K-1556 and 1558, unreported .....	passim
<i>In re Packard's Estate</i> (1963) 174 Ohio St. 349.....	10
<i>Ohio Grocers Association v. Levin</i> , 123 Ohio St.3d 30, 2009-Ohio-4872, ¶ 10 .....	8
<i>Q3 Stamped Metal, Inc. v. Zaino</i> (2001), 92 Ohio St.3d 493 .....	16, 17, 18
<i>State ex rel. Cleveland Elec. Illum. Co. v. Euclid</i> (1959), 169 Ohio St. 476.....	13
<i>State ex rel. McLean v. Indus. Comm.</i> (1986), 25 Ohio St.3d 90.....	10
<i>State v. Jackson</i> , 102 Ohio St.3d 380, 2004-Ohio-2006 .....	10
<i>State v. Wilson</i> (1997), 77 Ohio St. 3d 334.....	13
<i>UBS Finance Services, Inc. v. Levin</i> , 119 Ohio St.3d 286, 2008-Ohio-3821 .....	10
<i>Westinghouse Electric Corp. v. Lindley</i> (1979), 58 Ohio St.2d 137.....	8, 9

### STATUTES

R.C. 5717.04.....	1
-------------------	---

R.C. 5739.01 .....	8
R.C. 5739.01(B).....	8
R.C. 5739.01(D) .....	8
R.C. 5739.01(E).....	8
R.C. 5739.01(E)(12).....	2
R.C. 5739.01(E)(2).....	11
R.C. 5739.01(H) .....	7
R.C. 5739.01(I).....	8
R.C. 5739.01(P).....	8
R.C. 5739.01(AA) .....	8
R.C. 5739.01(BB).....	8
R.C. 5739.01(EE) .....	8
R.C. 5739.01(HH) .....	8
R.C. 5739.01(ZZ) .....	8
R.C. 5739.01(LL).....	8
R.C. 5739.02.....	8
R.C. 5739.02(B)(35).....	passim
R.C. 5739.02(B)(37) .....	11
R.C. 5739.029(B)(42)(g) .....	15
R.C. 5739.02(B)(42)(j) .....	passim
R.C. 5741.02(C)(2).....	5

**MISCELLANEOUS**

H.B. 572, 116 Ohio Laws, Pt. II, 69-70..... 11  
Am. Sub. H.B. 904, 144 Ohio Laws 598,6697, 6707..... 11  
LSC Bill Analysis regarding the nonappropriation provision of H.B. 904 ..... 12

## I. STATEMENT OF CASE AND FACTS

The appellant Commissioner takes this appeal as of right pursuant to R.C. 5717.04. This is an Ohio retail sales and use tax exemption case involving certain purchases of warehousing equipment, merchandise samples, and other personal property held and used in Ohio warehouse facilities by the appellee, Freudenberg NOK General Partnership (“FGP”), a manufacturer/wholesaler of automotive merchandise.

In its decision below, the BTA reversed the Commissioner and granted an unprecedented exemption pursuant to R.C. 5739.02(B)(42)(j) [“(B)(42)(j)”] regarding FGP’s purchases located in its Ohio warehouse facilities and used in connection with its **wholesale** merchandise. In so holding, the BTA rejected the Commissioner’s sixteen-year administrative interpretation that limited the exemption to only certain items used in connection with **retail** merchandise i.e., merchandise held for sale to end-users. *Freudenberg NKO General Partnership v. Levin* (Apr. 13, 2010), BTA Case Nos. 2008-K-1556 and 1558, unreported (“*BTA Decision and Order*”), Appx. 11-24.

The BTA decision and order reversed in part and affirmed in part the Commissioner’s final determinations. The BTA affirmed the Commissioner’s denial of exemption for certain of the contested purchases on the basis that they were not primarily used in FGP’s warehouse facilities for “storing, transporting, mailing, or otherwise handling purchased sales inventory \*\*\*,” as required under the exemption. The appellee, Freudenberg NOK General Partnership (“FGP”), did not file a cross-appeal from that portion of the BTA’s decision and order that denied the (B)(42)(j) exemption for certain of FGP’s warehouse purchases.

The controversy arises from the Commissioner’s use tax field audit of FGP’s purchases for the assessment period running from January 1, 2000 through December 31, 2002. See the

Commissioner's August 14, 2006 final determination regarding that audit, Supp. 1-3. Based upon their review of FGP's business records and plant tours, the Commissioner's auditing agents determined that FGP had failed to pay sales or use tax on various taxable purchases during the assessment period. See the auditing agents' "Examiner's Remarks," Supp. 24-31. As a result of these audit findings, the Commissioner issued a use tax assessment for the assessment period in the total amount of \$107,966.78, consisting of \$97,504.98 in use tax and \$10,461.80 in interest thereon. Supp. 8.

FGP then timely filed a petition for reassessment contesting the assessment on the basis that its assessed purchases of warehouse equipment and other tangible personal property qualified for sales and use tax exemption pursuant to R.C. 5739.02(B)(42)(j).<sup>1</sup> Supp. 5-23. Additionally, FGP filed a sales tax refund claim seeking refund of the sales taxes it had paid on certain purchases over the period from January 1, 2001 through December 8, 2004, asserting that it had erroneously paid sales taxes in the amount of \$65,965.22 on purchases properly exempt pursuant to (B)(42)(j). Supp. 354-355. As an extension of their use tax assessment field audit, the Commissioner's auditing agents investigated FGP's sales tax refund claim and determined that it should be properly denied because FGP failed to meet any of the threshold eligibility conditions for qualifying for the (B)(42)(j) exemption. Supp. 347-348.

Upon his review of FGP's petition for reassessment concerning the use tax assessment and FGP's sales tax refund claim, the Commissioner affirmed his auditing agents' findings. See the Commissioner's separate final determinations, Supp. 1-3 (regarding FGP's use tax petition for reassessment) and Supp. 344-345 (regarding FGP's sales tax refund claim). Specifically, the

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<sup>1</sup> The exemption currently codified at R.C. 5739.02(B)(42)(j) was originally codified at R.C. 5739.01(E)(12) as an exception to the definition of "retail sales," and then recodified as a sales tax exemption at R.C. 5739.02(B)(43)(j). For purposes of this brief, we will refer to the exemption using its current location in the Revised Code.

Commissioner rejected FGP's (B)(42)(j) exemption claim on the basis that FGP failed to meet any of the three threshold eligibility conditions for the exemption.

Because FGP did not even assert that it met either of the first two threshold eligibility conditions, the Commissioner focused his analysis and findings on FGP's failure to meet the third eligibility requirement, i.e., that the inventory held by FGP in its Ohio warehouse facilities must be distributed "primarily outside this state \*\*\* "by means of direct marketing." Id. In holding that FGP did not meet this third eligibility condition, the Commissioner applied his established administrative interpretation of the (B)(42)(j) exemption and the definition of "direct marketing" set forth in R.C. 5739.02(B)(35) ["(B)(35)"] and incorporated by reference in (B)(42)(j). Under that interpretation, "direct marketing" means marketing directed at purchasers of retail merchandise. Id.

The Commissioner expressly found that FGP "does not make retail sales to end users and has no retail facilities." See Supp. 1, 344. The Commissioner based these findings on his auditing agent's "Examiner's Remarks," Supp. 25 ("[t]he taxpayer [FGP] does not make retail sales to consumers nor does it operate any locations where retail sales are made from [.]"). Thus, the Commissioner held that FGP failed to meet the third threshold eligibility condition for qualifying for the exemption.

FGP then timely appealed the Commissioner's final determinations to the BTA on the basis of the (B)(42)(j) exemption, asserting that the Commissioner erred in failing to grant FGP's full sales tax refund claim of \$65,965.22, and in failing to reduce the use tax assessment from \$97,054.98 to \$5,277.97. See FGP's BTA Notice of Appeal in BTA Case 2006-K-1556 (concerning its sales tax refund) at 7; and FGP's BTA Notice of Appeal in BTA Case 2006-K-1558 (concerning its use tax assessment) at 7.

Neither in its BTA notices of appeal nor in the ensuing BTA evidentiary hearing did FGP contest the Commissioner's express findings that "FGP does not make retail sales to end users and has no retail facilities." Rather, at the BTA, FGP argued that the third threshold eligibility condition of (B)(42)(j) does not require that the merchandise held at a warehouse facility be held for retail sale to end-user purchasers. FGP asserted that (B)(35)'s definition of "direct marketing" encompassed within its scope merchandise sales to any purchaser, at any level of the distribution chain and, accordingly, that it satisfied (B)(42)(j)'s third eligibility condition.

Following the BTA evidentiary hearing and briefing, the BTA issued its decision and order affirming in part and reversing in part the Commissioner's final determination. The Commissioner then filed his appeal with this Court as of right. Any further facts will be referenced directly to the evidentiary record in the Law and Argument Section which follows.

## II. LAW AND ARGUMENT

**Proposition of Law No. 1:** Under the third threshold eligibility condition of the R.C. 5739.02(B)(42)(j) sales tax exemption, in order for a purchased item of warehousing equipment to qualify for exemption, the warehousing equipment must be used in connection with merchandise held at the warehouse for retail sale to end-user purchasers.

### A. The tax exemption issue

The issue presented is one of statutory interpretation. Central to the proper resolution of this appeal, therefore, is a careful analysis of the applicable statutory language, as set forth by the General Assembly in the (B)(42)(j) exemption, and as informed by related Ohio sales and use tax statutes. In this regard, it is important to first understand the basic structure of the (B)(42)(j) exemption. Pursuant to (B)(42)(j), the General Assembly has granted sales and use tax exemption regarding certain purchases of tangible personal property located in warehouse facilities and primarily used “for storing, transporting, mailing, or otherwise handling purchased sales inventory.”<sup>2</sup> For purposes of this brief, such potentially exempt personal property under R.C. 5739.02(B)(42)(j) is hereafter often referred to as “warehousing equipment.”

By (B)(42)(j)’s express terms, the exemption claimant must meet one of three threshold eligibility conditions to qualify its warehousing equipment for exemption. Namely, the “purchased sales inventory” located in the warehouse must be “primarily distributed outside this state” in one of the following three ways: (1) “to **retail stores** of the person who owns or controls the warehouse, \*\*\* or similar facility”; (2) “to **retail stores** of an affiliate of which that person is a member”; or (3) “by **direct marketing**.” (Emphasis added.) Further, (B)(42)(j) goes on to provide that the phrase “direct marketing” shall have the same meaning as in R.C.

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<sup>2</sup> Pursuant to R.C. 5741.02(C)(2), the sales tax exemptions are made applicable to the use tax.

5739.02(B)(35) [{"(B)(35)"}], which defines "direct marketing" as follows: "[D]irect marketing means the method of selling where **consumers** order tangible personal property by United States mail, delivery service or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier." (Emphasis added.)

In the present case, FGP has conceded that it failed to meet either of (B)(42)(j)'s first two eligibility conditions because those two conditions expressly require that the warehouse inventory must be distributed from the exemption claimant's warehouse facility to "retail stores" owned by the owner of the warehouse or an affiliate of the warehouse owner. Because FGP does not make retail sales of its merchandise and is not affiliated by ownership with any entities that make retail sales<sup>3</sup>, FGP plainly could not qualify under either of the first two threshold eligibility conditions of the exemption.

Instead, FGP claimed (and the BTA agreed) that FGP satisfied the third eligibility condition, i.e., that the inventory it held at its Ohio warehouse was "primarily distributed outside the state \*\*\* by means of direct marketing." Contrary to the Commissioner's administrative interpretation of the definition of "direct marketing" set forth in (B)(35), the BTA held that the term "consumers" contained therein encompasses all purchasers of merchandise, and was not limited to end-user, retail purchasers of merchandise. The BTA held that, therefore, FGP's distribution of its wholesale merchandise satisfied the third threshold eligibility condition. *BTA Decision and Order* at 9, Appx. 19.

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<sup>3</sup> See the Commissioner's express findings in his final determinations, Supp. 1-3, 344-345 and the Statement of Case and Facts section, *supra*.

**B. The BTA's broad expansion of the (B)(42)(j) exemption is unreasonable and unlawful because, in violation of basic rules of statutory interpretation, the BTA's reading fails to interpret the term "consumers" as contained in (B)(35)'s definition of "direct marketing" in the context of its general usage throughout R.C. Chapters 5739 and 5741 and in the context of the full texts of (B)(35) and (B)(42)(j).**

Under the BTA's expansive interpretation of "consumer," (B)(35)'s definition of "direct marketing" encompasses merchandise sales to purchasers at all levels of the distribution chain, not just to retail purchasers. In reaching this unprecedented interpretation, the BTA erred in three critical respects.

- 1. The BTA failed to adhere to the "strict construction" principle of statutory interpretation and failed to give due deference to the Commissioner's administrative interpretation, under which the term "consumer" as contained in the R.C. 5739.02(B)(35) definition of "direct marketing" is given its usual meaning as that term is generally used in Ohio retail sales and use tax law.**

First, the BTA erred in failing to consider the meaning of the term "consumer" as it is generally used in Ohio sales and use tax law. Throughout the Ohio retail sales and use tax law, the word "consumer" is used as a "term of art" meaning the person who is subject to the Ohio retail sales tax, i.e., the purchaser in a "retail sale" transaction. Because wholesale transactions are never subject to the retail sales tax, the term "consumer," as generally used in the Ohio sales and use tax laws, does not include purchasers in wholesale transactions and simply has no meaning as to such purchasers.

Indeed, the General Assembly has used the term "consumer" in a myriad of separate statutory provisions in the Ohio retail sales and use tax law to mean the person who is subject to the tax, i.e., the purchaser in a retail sale transaction. These various statutory provisions have no operative effect concerning any purchasers other than purchasers in retail sale transactions. For example, as used throughout the statutory definition of "price" in R.C. 5739.01(H), the term "consumer" means the purchaser subject to the tax, which excludes any purchasers other than

retail purchasers. Other examples in R.C. 5739.01 include: paragraphs (B), (D), (I), (P), (AA), (BB), (EE), (HH), (ZZ), and (LLL). The same observation applies to the meaning of the term “consumer” as contained throughout R.C. 5739.02, and in virtually every other instance when the term “consumer” is used in R.C. Chapters 5739 and 5741. For the Court’s convenience, in the portion of the Appendix hereto that contains the Ohio statutes cited herein, we have bolded the word “consumer” wherever it appears in these numerous Ohio sales and use tax provisions. Appx. 27-125.

Instead of interpreting the term “consumer” consistent with its general meaning in R.C. Chapters 5739 and 5741 (and in the context of the statutory language of the (B)(42)(j) and (B)(35) exemptions as a whole), the BTA looked to that term’s usage in R.C. 5739.01(E) (defining “retail sale” to exclude transactions by which the “consumer” purchases an item for resale in the same form).

The choice that the BTA made between these two different meanings of the term “consumer” itself violated a basic tenet of statutory interpretation. Tax exemptions are matters of “legislative grace” and must be “strictly construed” against the claim of exemption. Accordingly, any ambiguity in the statutes must be resolved against the exemption claim. *Ohio Grocers Ass’n v. Levin*, 123 Ohio St.3d 30, 2009-Ohio-4872, ¶ 10; *Canton Malleable Iron Co. v. Porterfield* (1972), 30 Ohio St.2d 163, 166 (holding that “statutes relating to the exemption or exception from sales or use taxes are to be strictly construed, and that one claiming such exemption or exception must affirmatively show his right thereto”); *Westinghouse Electric Corp. v. Lindley* (1979), 58 Ohio St.2d 137. Because the BTA’s interpretation of the term “consumers” would expand the scope of the exemption, it directly violates the “strict construction” principle.

The deduction at issue in *Westinghouse* and the exemption at issue here closely parallel one another, making *Westinghouse* particularly instructive. In *Westinghouse*, as here, the Court was faced with interpreting a tax exclusion statute, namely, a statute affording a corporate franchise tax deduction for purposes of computing a corporate franchise taxpayer's liability under the "net income" basis of the tax. Specifically, the statutory deduction at issue was for foreign-sourced "royalties." The corporate taxpayer, Westinghouse Electric, argued that the deduction for "royalties" meant the full amount of the royalty income received by Westinghouse from foreign sources without any reduction for related expenses. The Commissioner, on the other hand, asserted that the term "royalties" should be interpreted as "net royalties," i.e., after the netting of related expenses associated with the royalties. Holding that the deduction must be strictly construed and is a matter of "legislative grace," the Court upheld the Commissioner's narrower interpretation of the term "royalties" to mean "net royalties." *Id.* at 141-142. In other words, the Court restricted the meaning of the term "royalties" so as to limit the deduction to only that which was clearly and expressly provided for by the General Assembly.

In holding that the term "royalties" meant "net royalties," the *Westinghouse* Court gave the term "royalties" a meaning that accorded with the basic nature of the tax as one based on "net income." Similarly, under the Ohio **retail sales** tax, the Commissioner's interpretation of the term "consumers" to mean **retail** purchasers accords with the basic nature of the tax because it is only retail purchasers who are "consumers" under that tax. Thus, *Westinghouse* not only is important to the present case as constituting one of a uniform body of cases applying the "strict construction against tax exemption" principle, but also for the parallelism of its statutory language to that at issue here.

Further, this Court's precedent gives great deference to an administrative agency's well-established administrative practice, particularly where, as here, the "agency has accumulated substantial expertise," and the General Assembly "has delegated to the agency responsibility for implementing the legislative command." *State ex rel. McLean v. Indus. Comm.* (1986), 25 Ohio St.3d 90, 92; Accord, *UBS Fin Servs., Inc. v. Levin*, 119 Ohio St.3d 286, 2008-Ohio-3821, ¶34 (holding that the Tax Commissioner's "long standing administration practice[ ] \*\*\* should not be set aside unless judicial construction makes it imperative to do so") (quoting *In re Packard's Estate* (1963), 174 Ohio St. 349, 356).

For these reasons alone, the BTA should have affirmed the Commissioner's long-standing administrative interpretation. But this is not all. Even more critically, the BTA failed to read the term "consumers" and the definition of "direct marketing" in the context of the relevant statutes as a whole, as we detail in the following two sub-sections, B.2. and B.3.

- 2. The BTA erred by failing to interpret the term "consumers" as set forth in (B)(35)'s definition of "direct marketing" in the context of the whole statute. Reading the term "consumers" in the context of the whole statute establishes the Commissioner's interpretation is the one intended and expressed by the General Assembly in enacting the (B)(35) definition of "direct marketing."**

Even more fundamentally, the BTA erred by failing to apply the statutory interpretation principle that "words and phrases in a statute must be interpreted in the context of the whole statute." *Commerce & Industry Ins. Co. v. Toledo* (1989), 45 Ohio St. 3d 96, 102. Thus, a reviewing tribunal "cannot pick out a sentence and disassociate it from context but must look to the four corners of the enactment to determine the intent of the enacting body." *State v. Jackson*, 102 Ohio St.3d 380, 2004-Ohio-2006, ¶ 34. Here, the BTA's decision violates this basic tenet in the most extreme way. The BTA "picked out" the word "consumers" in isolation as a single

word and, thus, failed to consider the meaning of that term in the context of the full text of R.C. 5739.02(B)(35).<sup>4</sup>

The (B)(35) exemption is the modern version of the venerable “directly used in making retail sales” exception to the definition of “retail sales” that was initially enacted in 1935<sup>5</sup>, as an amendment to Section 5546-1 of the General Code. Specifically, in Am. Sub. H.B. 904, 144 Ohio Laws 6598, 6691, 6707 (eff. Jan.1, 1993), the General Assembly deleted the “directly used in making retail sales” exception from R.C. 5739.01(E)(2) [formerly G.C. 5546-1], replacing it with R.C. 5739.02(B)(37) [currently codified at R.C. 5739.02(B)(35)]. Appx. 138,156.

The Ohio Legislative Service Commission’s (“LSC’s”) analysis of Am. Sub. H.B. 904 contains a detailed explanation of the (B)(35) exemption under the caption “Exemptions for items used directly in making retail sales (secs. 5739.01 and 5739.02).” See Appx. 127-128. As the first two paragraphs of the LSC analysis expressly provide, the General Assembly’s enactment of the (B)(35) exemption accomplished two basic objectives. Specifically, according to the LSC analysis, the (B)(35) exemption:

- (1) Restricts the exemption under the sales and use tax law for items to be used or consumed directly in making **retail sales**; and
- (2) Provides exemption under the sales and use tax for purchases of certain items used by **direct marketing retailers**[.]

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<sup>4</sup> In fact, in quoting from (B)(35) the BTA’s decision includes only the definition of “direct marketing,” and omits any quotation, discussion, or analysis of any of the surrounding text of that exemption. Appx. 11-24. Thus, the BTA did not even begin to consider the term “consumer” and the definition of “direct marketing” in the context of the (B)(35) exemption. This omission in the BTA’s analysis is particularly remarkable given that the Commissioner’s final determinations expressly detailed the importance of reading the (B)(35) definition in *pari materia* with the whole text of (B)(35). See Supp. 1-3, 344-345.

<sup>5</sup>The General Assembly originally enacted the “directly used in making retail sales” exception as an amendment to G.C. 5546-1 pursuant to H.B. 572 of the 91<sup>st</sup> General Assembly, 116 Ohio Laws, Pt. II, 69-70 (eff. Dec. 20, 1935), Appx. 129-130. When the Revised Code was enacted in 1953, the “directly used in making retail sales” exception was recodified in R.C. 5739.01(E)(2).

(Emphasis added.) *LSC Bill Analysis regarding the nonappropriation provisions of H.B. 904*, Appx. \_\_\_.

Given that the (B)(35) exemption derives from the “directly used in making retail sales” exception, it is hardly surprising that the conditions for the (B)(35) exemption include that the claimant must be engaged in “making **retail** sales,” i.e., selling **retail** merchandise. When the General Assembly enacted the (B)(42)(j) exemption, it incorporated the (B)(35) definition of “direct marketing” with an intent that the same meaning of “direct marketing” as established in (B)(35) would apply to (B)(42)(j). Thus, when read in the context of (B)(35) as a whole, the term “consumers” means end-user, retail purchasers.

**3. Reading the (B)(35) definition in the context of the (B)(42)(j) exemption as a whole confirms that the term “consumers” means retail purchasers.**

Finally, the BTA’s interpretation of (B)(35)’s definition of “direct marketing” and of the term “consumers” used therein must be read in the context of the (B)(42)(j) exemption. “Statutes relating to the same matter or subject \*\*\* are in *pari materia* and should be read together to ascertain and effectuate if possible the legislative intent.” *D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, ¶ 20.

In this case, reading the full text of (B)(42)(j) together with (B)(35) confirms that the term “consumer” means the purchaser in a retail sale. This conclusion follows from a consideration of the narrow nature of the first two (B)(42)(j) threshold eligibility conditions which are directly linked to “retail” merchandise.

Under those first two eligibility conditions, the General Assembly has limited qualifying distributions of purchased sales inventory to only those distributions that occur primarily outside this state and that are made to “**retail stores**” owned by the warehouse owner or owned by an affiliate of the warehouse owner. Notable by its absence in these two eligibility conditions is any

reference to distributions outside this state to **wholesale** locations of the warehouse owner or affiliate of the warehouse owner. Thus, merchandise held at the exemption claimant's warehouse for sale at wholesale plainly does not qualify under the first two eligibility conditions.<sup>6</sup>

Yet, under the BTA's broad interpretation of the term "consumer" as used in (B)(35)'s "direct marketing" definition, (B)(42)(j)'s third eligibility requirement would apply not only to merchandise held for retail sale, but to **all** merchandise inventory that is ordered by the purchaser via the mail or telecommunications and that is then delivered from the warehouse to the purchaser via mail, delivery service, or common carrier. Under the BTA's expansive interpretation, the scope of the third eligibility condition would completely dwarf the scope of the first two eligibility conditions.

If the BTA's interpretation of the third eligibility condition were accepted, the first two eligibility conditions would be rendered virtually or completely meaningless -- in direct violation of one of the most basic tenets of statutory interpretation. "The General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose." *State v. Wilson* (1997), 77 Ohio St.3d 334, 336 (quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid* (1959), 169 Ohio St. 476, 479). By contrast, the Commissioner's long-standing administrative interpretation of the third threshold eligibility condition of (B)(42)(j) gives full effect to the two preceding threshold eligibility conditions.

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<sup>6</sup> FGP tacitly concedes this point by relying solely on the third eligibility condition as the basis for its claim that its assessed purchases meet (B)(42)(j)'s threshold eligibility conditions.

For all the above reasons, the BTA's broad expansion of the (B)(42)(j) exemption should be rejected by the Court, resulting in affirmance of the Commissioner's final determinations in their entirety.

Additionally, as detailed under Proposition of Law No. 2 of the Law and Argument, *infra*, even if the BTA's interpretation of (B)(42)(j)'s third threshold eligibility requirement were correct, the BTA erred in another way in its statutory interpretation. The BTA granted exemption for purchases of items that were not purchased "for use \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory \*\*\*," as required under the first sentence of the exemption.

**Proposition of Law No. 2: Items of sample merchandise and other tangible personal property that relate only in some preliminary, preparatory, or ancillary way to tangible personal property that is "used \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory" do not qualify for the R.C. 5739.02(B)(42)(j) warehousing equipment exemption.**

In its decision below, the BTA further erred by granting the (B)(42)(j) exemption for a large number of purchases that are not themselves "used \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory" within the meaning of the first sentence of (B)(42)(j). In our notice of appeal to this Court, we set forth the specific items that fail to qualify for exemption on that basis, using the somewhat cursory descriptive labels for these items provided by FGP in its BTA presentation and utilized by the BTA in its decision below. See the Commissioner's Notice of Appeal to this Court at numbered ¶ 13, Appx.6-8; *BTA Decision and Order* at 9-11, Appx. 18-20.

The vast majority of the items that we have identified in ¶ 13 of our Notice of Appeal are various "sample" kits, consisting of sample automotive merchandise. The BTA devoted only one sentence of its decision to ruling that such "sample" kits were "used primarily in storing,

transporting, mailing, or otherwise handling purchased sales inventory, as follows: “\*\*\*\* we find the purchases of items incorporated into visual demonstration boards, i.e., ‘sample,’ qualify for exemption as they are used to provide illustration to appellant’s assembly line employees as well as its quality control personnel to ensure the correct individual components are included within specific product kits.” *BTA Decision and Order* at 13, Appx. 23.

The BTA’s own characterization of the use of the “sample” kit merchandise establishes that these items should not have been granted exemption because they are not used “**primarily in** storing, transporting, mailing, or otherwise handling purchased sales inventory” (emphasis added). Instead, they are used preliminarily or preparatory to such “storing, transporting, mailing, or otherwise handling of purchased sales inventory.”

FGP’s personnel’s use of the sample kits as instructional items is at least one step removed from use “in” the qualifying activities. Plainly, these instructional items are not used in any form of “handling” of the purchased sales inventory. Thus, to grant exemption here for such items would contravene the General Assembly’s express legislative will. Further, because sales tax exemptions are in derogation of the rights of all other taxpayers and depend on “legislative grace,” they must be strictly construed. See the discussion of the “strict construction” principle in Section B of Proposition of Law No. 1, *supra*.

Reversal of the BTA’s grant of exemption for FGP’s purchases of sample kits is further compelled by this Court’s case law under the sales tax exemption granted pursuant to R.C. 5739.02(B)(42)(g) [“(B)(42)(g)”]. That statute exempts items of tangible personal property purchased for use “**primarily in a manufacturing operation** to produce tangible personal property for sale” (emphasis added). Under that statutory exemption, this Court has denied exemption for forklifts that were used to transport dies to and from a manufacturer’s press

machines. *Q3 Stamped Metal, Inc. v. Zaino* (2001), 92 Ohio St.3d 493. The *Q3 Stamped Metal* Court set forth the following guidance in upholding the Commissioner's denial of the exemption for the forklifts:

In order for the forklift to remove and replace the dies, the press must be stopped. When the press is stopped, no manufacturing operation is being conducted. The removal and replacement of dies are not themselves manufacturing operations. Thus, when the forklift is being used to remove and replace dies, it is not being used "during" a time when manufacturing operations are being conducted. Furthermore, since the press can function and production can continue without the forklift, it is not necessary for the functioning of the production machinery and equipment and the continuation of the manufacturing operation.

*Q3 Stamped Metal* at 495.

The sample kits at issue here are even further removed from the qualifying activities of "storing, transporting, mailing, or otherwise handling purchased sales inventory" under the (B)(42)(j) exemption than Q3's non-exempt forklifts were from the qualifying activity of "manufacturing" under (B)(42)(g). The forklifts, at least, constituted operating equipment used directly in connection with the manufacturing activities. Here, the sample kits are not used even indirectly to perform any operational function preceding the "storing, transporting, mailing, or otherwise handling of purchased sales inventory."

The items other than such "sample" merchandise kits that we have identified in our notice of appeal as failing to meet the "used \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory" are just as clearly non-exempt. These remaining items are as follows:

- (1) "Structural Column Protection," which the BTA described as "a round fiberglass protection device \*\*\* to protect both the wall/inventory racks and inventory itself from damage from forklifts," *BTA Decision and Order* at 10, 13 Appx. 20-23;
- (2) "compressed air line," which the BTA described as "used to operate pneumatic equipment, e.g., socket gun \*\*\* which serves to keep inventory handling equipment operational," *Id.*;

- (3) "Sprinkler system," which the BTA described as "upper and lower sprinkler system required by fire code and serves to protect the product," Id;
- (4) "Forklift Battery/Charger," which the BTA described as "the battery charger element used to maintain a charge in battery operated forklifts, Id.;
- (5) "Crown Battery Charger Stand and Sackett Battery Han," which the BTA described only as "associated with the above referenced guidance wires and batteries," Id.; and
- (6) "Tempus Systems Inc. Maintenance, Terminals, Manual," which the BTA described only as "used by warehousing employees," Id.

In its decision, the BTA merely concluded that these various items qualified for exemption, without any reasoning or analysis. See *BTA Decision and Order* at 12 (concluding, without discussion, that the "Forklift Battery/Charger" qualified) and *BTA Decision and Order* at 13 (concluding, without discussion, that "[w]e also agree that qualifying for exemption as storing, transporting, or handling are the aforementioned column protection devices, compressed air lines, sprinkler \*\*\* systems." Appx. 22.

For the same reasons that the BTA erred regarding the sample merchandise kits, it erred regarding these other items. *Q3 Stamped Metal* confirms this conclusion. As we emphasized above, the *Q3 Stamped Metal* Court's holding and analysis that the forklifts at issue in that case were not used in manufacturing provides compelling guidance for rejecting the BTA's broad construction of the (B)(42)(j) exemption here. The maintenance and repair functions performed by the battery charger and the other items are not storage, transportation, mailing, or handling activities.

Moreover, *Q3 Stamped Metal's* reasoning concerning the manufacturer's purchase of protective glasses used by the manufacturer's production workers provides additional compelling guidance. In that case, the Court applied the BTA's finding that the "primary use" of the welding glasses was for production purposes -- to enable the welders "to observe the welding

being done,” holding on that basis that the welding glasses qualified for exemption. *Q3 Stamped Metals*, 92 Ohio St.3d at 496. In so holding, however, the Court emphasized that a secondary use of the welding glasses -- to protect the welders’ eyes “from the bright light” -- was **not** constitute a qualifying use “in manufacturing.” *Id.* Thus, because the sprinkler system and structural column support items at issue here serve only a protective function similar to the protective, non-exempt function of the welding glasses at issue in *Q3 Stamped Metals*, they plainly fail to qualify for exemption.

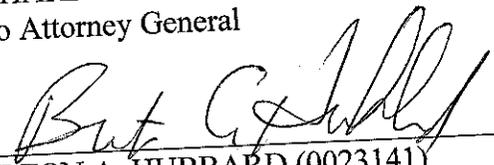
### III. CONCLUSION

The BTA's interpretation of the third threshold eligibility condition set forth in the R.C. 5739.02(B)(42)(j) exemption for certain purchases of warehouse equipment would geometrically expand the reach of the exemption beyond the Commissioner's long-standing and reasonable administrative interpretation. For the foregoing reasons, such a broad expansion of the exemption is unreasonable and unlawful. Therefore, this Court should reverse the BTA's decision to the extent that it reversed the Commissioner's final determinations.

Additionally, and as a protective matter, even if the BTA's interpretation of the third threshold eligibility condition of R.C. 5739.02(B)(42)(j) is upheld by this Court, the Court should reverse the BTA's decision to the extent that it granted exemption for purchases of items that were not primarily used for "storing, transporting, mailing, or otherwise handling purchased sales inventory \*\*\*" as required under the first sentence of the (B)(42)(j) exemption.

Respectfully submitted,

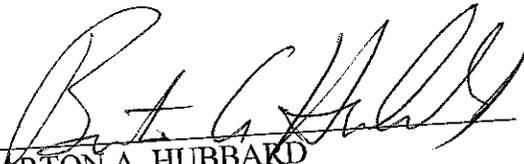
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Merit Brief of Appellant was sent by regular U.S. mail and email transmission to J. Donald Mottley, Taft, Stettinius & Hollister, LPP, 65 East State Street, Suite 2100, Columbus, Ohio 43215-4221, counsel for Appellee, on this 15<sup>th</sup> day of August, 2010.

  
BARTON A. HUBBARD  
Assistant Attorney General

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2010 MAY 13 PM 3:30

In the  
**Supreme Court of Ohio**

10-0866

FREUDENBERG NOK GENERAL  
PARTNERSHIP,

Appellee,

v.

WILLIAM W. WILKINS, TAX  
COMMISSIONER OF OHIO,  
[RICHARD A. LEVIN]

Appellant.

Appeal from BTA  
Case Nos. 2006-K-1556  
2006-K-1558

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**NOTICE OF APPEAL**

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**FILED**  
MAY 13 2010  
CLERK OF COURT  
SUPREME COURT OF OHIO

## NOTICE OF APPEAL

Richard A. Levin (as successor to William W. Wilkins), Tax Commissioner of Ohio ("Commissioner"), hereby gives notice of his appeal as of right, pursuant to R.C. 5717.04, to the Supreme Court of Ohio from the Decision and Order of the Ohio Board of Tax Appeals ("BTA") dated April 13, 2010 in BTA Cases No. 2006-K-1556 and 2006-k-1558, entered on the journal of the proceedings on April 13, 2010. This appeal is filed in accordance with Section 5717.04, Ohio Revised Code, and Section 3(A)(1), S. Ct. Prac. R. II. A true copy of the Decision and Order of the BTA from which appeal is sought is attached hereto as Ex. A and incorporated herein by reference. This notice of appeal is being filed within thirty days of the entry of the attached BTA decision and order as required by statute and rule.

The errors in the Decision and Order of the BTA of which the Commissioner complains are as follows:

1. The BTA erred in reversing in part the Final Determinations of the Commissioner in which the Commissioner upheld the denial of a sales tax refund (regarding BTA Case No. 2006-K-1558) and upheld a use tax assessment (regarding BTA Case No. 2006-K-1556). The BTA should have affirmed the Commissioner's Final Determinations in their entirety and denied exemption for any of the transactions which were the subject of the subject sales tax refund and use tax assessment (the "transactions at issue").
2. The BTA erred as a matter of fact and law in concluding that any of the transactions at issue qualified for exemption from sales and use taxation under R.C. 5739.02(B)(42)(j).

3. The BTA erred as a matter of fact and law in concluding that Freudenberg NOK General Partnership ("Freudenberg") satisfied the requirements for exemption set forth in R.C. 5739.02(B)(42)(j) as relating to the transactions at issue.
4. The BTA erred as a matter of fact and law in concluding that the transactions at issue qualified for exemption from sales and use taxation under R.C. 5739.02(B)(42)(j) because, with respect to its use of the tangible personal property at issue, Freudenberg did not engage in "direct marketing" as that term is used and defined in R.C. 5739.02(B)(35).
5. The BTA erred as a matter of fact and law in determining that Freudenberg was engaged in "direct marketing" when Freudenberg is only incidentally, if at all, engaged in making retail sales to end-user consumers but, instead, is almost exclusively engaged in making sales to wholesalers and retailers, who, in turn, resell the items purchased from Freudenberg to others.
6. The BTA erred as a matter of law in concluding that Freudenberg satisfies R.C. 5739.02(B)(42)(j) because to be engaged in "direct marketing" a seller must be engaged in making retail sales directly to the ultimate consumer.
7. The BTA erred as a matter of law in misinterpreting the word "consumers" in the last paragraph of R.C. 5739.02(B)(35) (defining "direct marketing" for purposes of division (B)(35)). The BTA's erroneously interprets the term "consumers" to be synonymous with the BTA's interpretation of the definitions of "consumer" in R.C. 5741.01(F) (use tax) and R.C. 5739.01(D)(1) and (E) (sales tax).
8. The BTA's erroneous interpretation of "consumer" would unreasonably and

unlawfully conflict with and render meaningless a substantial portion of R.C. 5739.02(B)(35)(b). Specifically, because the definitions of "consumer" in R.C. 5741.01(F) and R.C. 5739.01(D) exclude persons who receive tangible personal property or services **without charge**, i.e., free, the BTA's erroneous interpretation would directly conflict with and render meaningless the language of R.C. 5739.01(B)(35)(b)(2) that refers to "direct marketing vendors" as encompassing persons making sales to consumers of "free merchandise."

9. The BTA should have interpreted the term "consumers" as used in the definition of "direct marketing" to mean purchasers in retail sales. Such reasonable and lawful interpretation of "consumers" gives full meaning to R.C. 5739.02(B)(35)(b) under the most basic rules of statutory interpretation.
10. In addition to giving full meaning to R.C. 5739.02(B)(35)(b), the Commissioner's interpretation of the term "consumers" as set forth in R.C. 5739.01(B)(35)'s definition of "direct marketing" is compelled when that definition is read in *pari materia* with R.C. 5739.01(B)(35)(a) (providing exemption for "newspaper inserts, catalogues, coupons, flyers, gift certificates or other advertising material" that is used "**in making retail sales**") (emphasis added), and R.C. 5739.01(B)(35)(b) (providing exemption for various kinds of personal property used to accept orders for "direct marketing **retail sales**") (emphasis added).
11. BTA further erred in its interpretation of "direct marketing" and the term "consumers" used therein by failing to limit the term "consumers" to only those

persons who use or consume the item purchased for their own consumption, and not for resale to others because such limitation accords with the usage of the term "consumer" throughout the Ohio sales and use tax law. See, e.g., R.C. 5741.02 (levying the Ohio use tax on all "consumers" "storing, using or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided"); R.C. 5739.03(A) (providing that the Ohio sales tax "shall be paid by the consumer").

12. The BTA independently erred in its interpretation of the sales and use tax exemption set forth R.C. 5739.02(B)(42)(j) by failing to read the phrase "by means of direct marketing" in *pari materia* with the remainder of that statute.

Specifically, R.C. 5739.02(B)(42)(j) provides exemption for three kinds of purchases that are used or consumed primarily in storing, transporting, mailing, or otherwise handling "purchased sales inventory" in a warehouse: (a) when the inventory is primarily distributed outside the state to retail stores of the warehouse owner (i.e., the person seeking the exemption); (b) when the inventory is primarily distributed to retail stores of an affiliate of such warehouse owner; and (c) when the inventory is primarily distributed by means of direct marketing.

The BTA's erroneous interpretation of the third exemption category would "swallow up" and render meaningless the first two kinds of exemptions, i.e., categories (a) and (b) above. That is, there would be no purpose or effect to the first two categories, if "direct marketing" encompasses distribution of merchandise to all persons (i.e., whether ultimate consumers or purchasers for

resale).

13. Assuming arguendo that the BTA decision was otherwise reasonable and lawful, the BTA erred as a matter of fact and law in concluding that Freudenberg met its affirmative burden of establishing that certain of the purchased tangible personal property at issue qualified as used or consumed "primarily in storing, transporting, mailing or otherwise handling purchased sales inventory." Specifically, the BTA erred by exempting the following transaction (as listed in the BTA's Decision and Order) within the meaning of R.C. 5739.02(B)(42)(j):

- Forklift Battery/Charger;
- Structural Column Protection from C & H Distributors;
- 460' of 1-inch air line to existing column #18 from Johnson Plumbing, Heating & AC;
- Progressive Billing for Corteco Mezzanine Sprinkler from S A Comunale Co. Inc.;
- Maintenance, terminals, and manual from Tempus Systems, Inc.;
- Crown Batteries Charger Stands and Sackett Battery Han from Total Fleet Solutions;
- Sample-Engine Sales Ford 4.6L F-4 from Parker Powertrain;
- Samples 1-Oil Ring, oil Seal, O Ring, Water Seal, and O Ring Kit from Sandusky Toyota Chrysler Plymo from R & D Equipment, Inc.
- sample gaskets from Interstate Billing Services;
- 1U-Steering Gear Rack, 1U Power Steering Pump, 1Y-Engine

Assembly Chevy 350 Motor Parts 2 Piece Rear Main SE, and 1Y-  
Engine Assembly from Fireside Auto Services, Inc.;

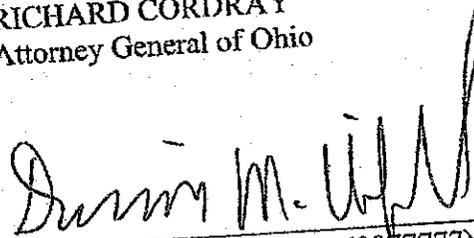
- Sample-2-Seal Kit-S from Ganley East, Inc.;
- Samples, Samples-1-Specl Seal Set, Samples -1-Specl Boot, and Rac  
from Ganley Mazda;
- Sample Gasket Kit from Metro Toyota, Inc.;
- Samples-1 Seal Kit Power, 1 Seal kit Housin, Samples-1-1 Oil Seal  
Kit, and 1 Seal Kit RR HS from Zarzour Nissan, Inc.;
- 4 Samples 2# from Acadia Polymers;
- Samples-2 EGR Pipe Kits, Samples-1 Hose Set, Samples-1 Brake  
Hose Clip (multiple), RR Brake Hose, Gasket B Oil Bolt, Samples -1  
Brake Hose Clip, FR Brake R (multiple), FR Brake L (multiple), Fr  
Brake, RR Brake R, Gasket B, Oil Bolt, Samples-Speaker Assy, and  
Tweeter from American Honda Motor Co., Inc.;
- Samples-1 Renault Piston Kit, and Samples-1 Spx #27602 from ATC  
Distribution Group;
- Samples 2-Converter Seal Installers, Samples Update Kits, Hi Perf  
Bands, Pump Vane, and Gear Kit Governor from Transtar Industries
- Samples-Pan Assy Oil, Samples-Bolt, Samples-1 Resistor Assy-A,  
Samples-Retainer Assy-Oil, Seal-Oil Cranks, Gaskets, and Gasket  
Reta from Zarzour Nissan, Inc.;
- World Samples-2 Trans Seals from Parts Distributors, Inc.;

- 1-World Seal B Samples from Sandusky Motors, Inc.; and
- Sample 1-Gasket-Cyl, Sample 1-Gasket Thr, and O Ring ELT from Sandusky Toyota Chrysler Plymo.

14. Because sales tax exemptions are a matter of legislative grace and in derogation of the rights of all other taxpayers, the Board erred in failing to strictly construe the exemption under R.C. 5739.02(B)(42)(j) against Freudenberg.

Respectfully submitted,

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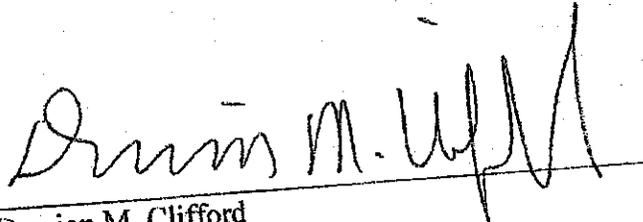
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Tax Commissioner of Ohio

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Notice of Appeal was filed by hand delivery with the Ohio Board of Tax Appeals, 30 E. Broad St., 24<sup>th</sup> Floor, Columbus, Ohio 43215 and was served by certified mail, return receipt requested upon J. Donald Motley, Taft, Stettinius & Hollister, LLP, 21 E. State Street, Suite 1200, Columbus, Ohio 43215-4221, counsel for Appellee, on this 13<sup>th</sup> day of May 2010.



Damion M. Clifford  
Assistant Attorney General



**OHIO BOARD OF TAX APPEALS**

Freudenberg NOK General Partnership, )  
Appellant, )  
vs. )  
William W. Wilkins, Tax Commissioner )  
of Ohio, )  
Appellee. )

CASE NOS. 2006-K-1556  
2006-K-1558  
  
(SALES AND USE TAX)  
  
DECISION AND ORDER

**APPEARANCES:**

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Entered **APR 13 2010**

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

Through these appeals, appellant challenges two final determinations of the Tax Commissioner, both of which arise from business activities conducted at appellant's Milan, Ohio facility. In BTA No. 2006-K-1556, the commissioner denied appellant's application for a refund of sales tax claimed to have been illegally or erroneously collected and paid for the period of January 1, 2001 to December 8, 2004,<sup>1</sup> while in BTA No. 2006-K-1558, the commissioner denied appellant's petition for reassessment challenging a use tax

<sup>1</sup> Through its application, appellant sought a refund of \$65,965.22.

EXHIBIT A

assessment on its purchases during the period of January 1, 2000 to December 31, 2002.<sup>2</sup> We proceed to consider these matters collectively<sup>3</sup> upon appellant's notices of appeal, the transcripts certified by the Tax Commissioner pursuant to R.C. 5717.02, the record of this board's hearing,<sup>4</sup> and the post-hearing written arguments on behalf of the parties. The sole witness to testify at this board's hearing was Jason E. Meier, the chief financial officer for the Corteco division, appellant's aftermarket division which operates at the Milan facility.

The parties agree that the majority of the facts involved in these appeals are not in dispute. Although appellant is also a manufacturer of assemblies which are incorporated into automobiles, its Milan facility is used to facilitate its "[w]arehousing, purchasing, \*\*\*, kitting, \*\*\* and distribution of product into the aftermarket of the automobile industry." H.R. at 14. Initially describing appellant's purchase and use of several of the individual items subject to its refund application and the commissioner's assessment, appellant's witness proceeded to discuss its business operations, testifying that appellant's customers place orders "primarily through electronic means, direct mail, faxes, e-mail, [and] telephone communication," H.R. at 14, and that appellant's kits and subcomponents are "distributed to the respective customer orders through means of if you want to say regular transportation, Conway, UPS, Federal Express, that type of thing." H.R. at 15.

Meier then discussed its customer interactions, indicating that product sales/distributions are effected through six different "customer channels:" (1) Original

<sup>2</sup> The use tax assessment in issue, inclusive of preassessment interest, totaled \$107,966.78.

<sup>3</sup> Although these appeals were not formally consolidated by this board, they were heard and briefed collectively. Accordingly, pursuant to Ohio Adm. Code 5717-1-08, they are hereby consolidated for purposes of resolution.

<sup>4</sup> Appellant moved this board to effect various corrections to the original hearing record filed with this board. Upon review of the proposed corrections, said request was ultimately granted with a corrected transcript having been submitted.

Equipment ("OE") Service— appellant distributes product kits to the service divisions or distribution centers of automobile manufacturers, e.g., Jeep, Ford, and Chrysler, which redistribute product kits to their automobile dealerships for use in needed repairs; (2) Retail/Do It Yourself ("DIY") —kits are sold to individual automotive repair shops which use the parts purchased in automotive repair; (3) Professional Engine Rebuilders ("PER") — kits or single point bulk items are distributed to companies which rebuild engines, transmissions or power steering segments/systems which are then sold to the ultimate market; (4) Distributor Subkit — appellant's "soft kit" is sent to Transtar, a wholesaler and appellant's largest customer through this channel, which combines appellant's soft kit with other hard parts for an overall master transmission kit which is then offered on the market; (5) Distributor Pass Through — appellant's kit is sold to wholesale distributors, commonly exporters, which sell the product in its original shape/form in their respective countries; and (6) OE — appellant distributes product to engine manufacturers which incorporate the items into finished product, e.g., engines, oil pans, assembly systems, etc., which is then sold on the open marketplace. Relying upon 2003 data, appellant indicated that its Milan facility had sales totaling approximately \$132 million, approximately 16% of which were to Ohio customers while the remaining 84% of the sales were outside the state. Among its different customer channels, the majority of sales, i.e., 48%, were made as Distributor Pass Through, followed by Distributor Subkit at 26% of total sales, OE at 13%, PER at 12%, Retail/DIY at 1%, and OE Service at apparently less than .5%.

With this general operations background, appellant claimed a number of its purchases on which sales tax had been paid or for which use tax had been assessed<sup>5</sup> were exempt from the imposition of either sales or use tax. R.C. 5739.02 generally provides:

"For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state."

Continuing, R.C. 5739.02(B) expressly exempts certain types of transactions from taxation:

"The tax does not apply to the following:

\*\*\*\*

"(42) Sales where the purpose of the purchaser is to do any of the following:

\*\*\*\*

"(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, 'affiliated group' has the same meaning as in division (B)(3)(e) of section 5739.01 of the

<sup>5</sup> Complementary to the tax imposed on taxable sales made within Ohio, R.C. 5741.02(A)(1) levies an excise tax on "the storage, use, or other consumption in this state of tangible personal property \*\*\*"

Revised Code and 'direct marketing' has the same meaning as in division (B)(35) of this section."

Referenced in the preceding statute, R.C. 5739.02(B)(35)<sup>6</sup> defines the phrase "direct marketing" as "the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier."

In each of his final determinations, the Tax Commissioner determined appellant did not qualify for the exemption allowed by R.C. 5739.02(B)(42)(j) because its activities did not constitute "direct marketing." In reaching this conclusion, the commissioner reasoned that the definition of direct marketing must be read in the context of the exemption provided for within R.C. 5739.02(B)(35):

"The claimant argues that it falls within the purview of R.C. [5739.02(B)(42)(j)] as a direct marketer. The claimant maintains sales inventory in the facility in question. This inventory is primarily distributed outside Ohio. The question remains whether the claimant's activities constitute 'direct marketing.' The claimant receives orders from its customers by means of the mail, delivery service or telecommunications. The claimant ships the tangible personal property from its warehouse by means of common carrier. The definition of 'direct marketing' found in R.C. 5739.02(B)(35)(c), however, must be read in conjunction with the entirety of the exemption found at R.C. R.C. 5739.02(B)(35) and cannot be properly construed without considering the context of the exemption therein.

"R.C. 5937.02(B)(35) provides exemption for certain items for use in making retail sales and, more specifically, subsection (b) provides exemption for certain items used in making direct

<sup>6</sup> This definition appears in the second paragraph of R.C. 5739.02(B)(35)(c).

marketing retail sales. Therefore, when the R.C. [5739.02(B)(42)(j)] exception is construed in *pari materia* with the (B)(35) exemption for direct marketers, it is evident that the exception applies only in the case of retail sales.

“Since the claimant did not engage in making retail sales, the claimant could not be engaged in direct marketing. Therefore, the claimant’s purchases cannot satisfy the requirements of the warehouse exemption \*\*\*.” BTA No. 2006-K-1556, S.T. at 1-2.

From the commissioner’s denial of its application for refund of sales tax and its objections to assessments for use tax, appellant appealed to this board, arguing that the commissioner’s reading of R.C. 5739.02(B)(42)(j) requiring it to make retail sales in order to qualify for the exemption is unduly restrictive and not required by the express terms of the statute. In considering appellant’s appeals, we note that findings made by the Tax Commissioner are presumptively valid and that an appellant must demonstrate, with competent and probative evidence, that such findings are in error. *Alcan Aluminum Corp v. Limbach* (1989), 42 Ohio St.3d 121, 124; *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213, 215; *Standards Testing Laboratories, Inc. v. Tracy*, 100 Ohio St.3d 240, 2003-Ohio-5804; *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Furthermore, as the court pointed out in *Cousino Construction Co. v. Wilkins*, 108 Ohio St.3d 90, 2006-Ohio-162, at ¶11, “[a]ny claimed exemption from taxation ‘must be strictly construed,’ and the taxpayer ‘must affirmatively establish his or her right’ to the exemption. *Campus Bus Serv. v. Zaino*, 98 Ohio St.3d 463, 2003-Ohio-1915, \*\*\* ¶8.”

It appears uncontroverted that the Milan facility is a warehouse, distribution center, or similar facility and that appellant’s purchased sales inventory is primarily

distributed outside Ohio by U.S. mail, delivery service, or common carrier, to customers who have placed orders by U.S. mail, delivery service, or telecommunication. The commissioner contends, however, that appellant "does not satisfy the direct marketing requirement of R.C. 5739.02(B)(42)(j) because its customers are not 'consumers' that are subject to sales and use tax because they primarily resell the items purchased from Freudenberg \*\*\* [and that appellant's] claims are still barred because a significant majority of the items requested for exemption are not used in storing, transporting, mailing, or otherwise handling purchased sales inventory." Id. at 3.

In advancing the first of these arguments, the commissioner maintains appellant does not satisfy the "direct marketing" definition of R.C. 5937.02(B)(35), referenced within R.C. 5739.02(B)(42)(j), because its sales are not retail sales on which tax is paid by its customers since the personal property transferred is held for resale, see R.C. 5739.01(E),<sup>7</sup> and because the purchasers of appellant's products are not consumers. We disagree.

The term "consumer" is separately defined for purposes of Ohio's sales and use tax chapters, the former being set forth in R.C. 5739.01:

"As used in this chapter:

\*\*\*\*

"(D)(1) 'Consumer' means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted."

<sup>7</sup> R.C. 5739.01(E) defines "retail sale" and "sales at retail," for purposes of the excise tax levied by R.C. 5939.02 to "include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person."

With respect to use tax, the term is defined in R.C. 5741.01 as follows:

"As used in this chapter:

\*\*\*

"(F) 'Consumer' means any person who has purchased tangible personal property or has been provided a service for storage, use, or other consumption or benefit in this state. 'Consumer' does not include a person who receives, without charge, tangible personal property or a service."

Notwithstanding the commissioner's apparent concession that appellant's customers fall within these definitions, he nevertheless cites to dictionary definitions and Ohio's general statutory framework, i.e., R.C. 5739.03(A) and R.C. 5741.02(B),<sup>8</sup> to surmise that because it is the intent to impose tax upon "end users," the definition of "consumer" must necessarily exclude persons who purchase items for resale. As a corollary to this argument, the commissioner insists that the person engaged in direct marketing must make retail sales. In essence, the commissioner reads the direct marketing exemption to encompass only entities which market directly to the ultimate consumer who pays tax on such transactions. However, the preceding statutes impose no such requirements and we are unwilling to engage in statutory construction to interject such words where the language of the statute is plain and unambiguous.<sup>9</sup>

<sup>8</sup> R.C. 5739.03(A) provides that "the tax imposed by or pursuant to section 5739.02 \*\*\* of the Revised Code shall be paid by the consumer to the vendor, and each vendor shall collect from the consumer, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale \*\*\*," while R.C. 5741.02(B) provides that "[e]ach consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and these provisions shall not be extinguished until the tax has been paid to this state." The commissioner asserts that these provisions "demonstrate that the meaning of 'consumer' is two fold: (1) the consumer is the person who receives the benefit of the item purchased and (2) is the person that pays the tax." Appellee's brief at 8.

<sup>9</sup> As noted in R.C. 5739.01(E), even though a purchase may be excepted from tax, a person may still constitute a "consumer."

Having concluded that the nature of appellant's operations at its Milan facility does not alone disqualify it from seeking exemption for its purchases pursuant to R.C. 5739.02(B)(42)(j), we next consider whether appellant has demonstrated such purchases were "use[d] or consume[d] \*\*\* primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory[.]" In its brief, appellant notes that the taxable status of several items is no longer in issue.<sup>10</sup>

During this board's hearing, Meier testified regarding several purchases for which a refund of sales tax was requested and for which use tax was assessed, generally described below:

BTA No. 2006-K-1556<sup>11</sup>

- Toyota Standup Reach Truck Monthly Rental – a fork lift which is used to retrieve product stored at upper levels at different stations within the Milan facility
- Toyota Order Picker Monthly Rental – a platform that employees can use to access product stored at various levels within the facility
- Guidance Wire for Toyota Order Picker – wiring imbedded into concrete which receives/transmits the signal from the Toyota Order Picker and allows it to safely move on a delineated path to its destination
- Toyota Sit Down Rider CB and Toyota Forklift Monthly Rental – standard forklifts used to handle material and inventory associated with appellant's end product

<sup>10</sup> Conceding it failed to meet its burden of proof under the claimed statutory basis for exemption, appellant withdrew its claim for refund for taxes paid with respect to a 2002 Industrial Cleaner. See BTA No. 2006-K-1556, S.T. at 37. It also withdrew its objections to several purchases on which use tax was assessed described in worksheets as install water tap & supply for emer shower & eyewash, canned soda, box coffee filters, mowing of woods, L & BLDG Supplies 1-maintenance kit, cartridge assembly-negative, , invoice for 25% Lewco sales order, Ward's motor vehicle data book, Seeing the Whole, McMillian Dictionary, Zig, Ziglar & Gr. Leaders Quotes, Warehouse Systems & the Supply Chain, and walnut finish award plaques. See BTA No. 2006-K-1558, S.T. at 9, 11-12, 16, 18-21. Appellant also withdrew its objections to assessments on credit card purchases made by its employees Kay Ziles, an employee in sourcing purchasing, and Todd Gilbert, an employee involved in sales in OES, whose duties were admittedly separate and distinct from the claimed exemption. See Appellant's brief at 17-21.

<sup>11</sup> At the outset of Meier's direct examination regarding the various purchases, counsel noted his reason for eliciting testimony with respect to purchases identified in BTA No. 2006-K-1556, S.T. 34-37: "For the record, since this is part of the Statutory Transcript, the Statutory Transcript will show that this was part of the list of invoices and purchases and the amount of sales tax paid to the vendor on those purchases on the refund application. Pages 18 through 34 are basically repeats of monthly invoices for the same equipment. So I am going to focus on Pages 34 through 37 because if we – from that point forward, uh, we will actually have a description for each piece of equipment." H.R. at 18.

- Forklift Battery/Charger and Guidance Wire – the battery charger element used to maintain a charge in battery operated forklifts and guidance wires imbedded into concrete which receives/transmits signals allowing particular forklifts to move to designated inventory locations
- Upright Lift Truck – similar in function and use to the Toyota Standup Reach Truck
- Toyota Walkie Rider Pallet Truck Monthly Rental – self-propelled material-handling equipment used for moving pallets of inventory a few inches above the ground

BTA No. 2006-K-1558<sup>12</sup>

- C & H Distributors: Structural Column Protection – a round fiberglass protection device attached to key load bearing walls/inventory racks to protect both the walls/inventory racks and inventory itself from damage from forklifts
- Johnson Plumbing, Heating & AC: Ran 460' of 1-inch air line to existing column #18 – the former is a compressed air line used to operate pneumatic equipment, e.g., socket gun, within the Milan facility which serves to keep inventory handling equipment, e.g., forklifts, operational<sup>13</sup>
- S A Comunale Co. Inc.: Progressive Billing for Corteco Mezzanine Sprinkler – upper and lower level sprinkler system required by fire code and serves to protect product
- Siemens Dematic Corp.: Conveyor Equipment/Equip & Services 30%/24% for Pick Modul – a conveyor system within a master picking module that provides for retrieval of individual inventory components
- Tempus Systems Inc.: Timeclock, Maintenance, Terminals, Manual – used by warehousing employees
- Total Fleet Solutions: Wire Guidance System and Installation; Crown Batteries Charger Stands, Sackett Battery Han – associated with above-referenced guidance wires and batteries
- MT Business Technologies, Inc.: Monthly Maintenance Contract #23264 & Copies – a copy machine and associated maintenance contract believed to be in the customer service department
- Headsets, Inc.: 2-GN Netcom 2100 Series Flex-Binaural Flex Headsets w/ Noise Canc – required communication devices used by customer service and warehouse personnel
- Nu Wave Technology Inc.: 19" Rack Blank Filler, 1½" Wire Management; Emergency Phone Hookup & Wire New Locations 50% – uncertain but involves recabling/networking of customer service department
- R&D Equipment Inc.: 12-Shelf Brackets; Parker Powertrain: Sample-Engine Sales Ford 4.6L F-4; Sandusky Toyota Chrysler Plymo: Samples 1-Oil Ring, Oil Seal, O Ring, Water Seal, O Ring Kit – presumably involved in purchasing of product

<sup>12</sup> Counsel directed the witness' attention to page S.T. 9 through 23 where individual line items identify the vendor and offer a brief description of the associated purchase.

<sup>13</sup> Appellant's objection to an additional purchase from Johnson Plumbing, Heating & AC, i.e., install water tap & supply for emer shower & eyewash, was withdrawn. See fn. 10.

- used to create shadow boards/visual aids<sup>14</sup> to ensure that the respective operators on the assembly line are including the correct products in a product kit
- Homberger Trucking Co.: 3 Trailers Rental X 125.00, 3 Trailers Rental X 125.00, and 7 Trailers Rental X 125.00; 1 3 Trailer Rental X 62.50; and G Edward Wikel Inc.: Storage Trailers spotted at Milan Facility Monthly Rental Charge – rental of trailers where appellant's inventory/finished product was temporarily stored during a transition between layouts of appellant's Milan facility
  - Interstate Billing Service: Sample Gaskets – believed to relate to sample used in the construction of shadow board
  - Fireside Auto Services, Inc.: 1U-Steering Gear Rack, 1U Power Steering Pump, 1Y-Engine Assembly Chevy 350 Motor for Parts 2 Piece Rear Main SE, 1Y-Engine Assembly; Ganley East, Inc.: Samples-2-Seal Kit-S, The Invoice Not Attached to Check #077501; Ganley Mazda: Samples-, Samples-1-Specl Seal Set, Samples-1-Specl Boot, Rac; Metro Toyota, Inc: Sample Gasket Kit ; Zarzour Nissan Inc: Samples-1 Seal Kit Power, 1 Seal kit Housin, Samples-1-1 Oil Seal Kit, 1 Seal Kit RR HS – all samples purchased for shadow board and quality control systems
  - Acadia Polymers: 4 Samples 2#; American Honda Motor Co Inc: Samples-2 EGR Pipe Kits, Samples-1 Hose Set; Samples-1 Brake Hose Clip, RR Brake Hose, Gasket B Oil Bolt, Samples-1 Brake Hose Clip, FR Brake R, Samples-1 Brake Hose Clip, RR Brake L, Samples-1 Brake Hose Clip, FR Brake, Samples-1 Brake Brake Hose Clip, Gasket B, Oil Bolt, Samples-Speaker Assy, Tweeter – samples purchased for production, quality service, and shadow board
  - ATC Distribution Group: Samples-1 Renault Piston Kit, Samples-1 Spx #27602 – respective samples relating to appellant's quality systems and shadow boards
  - Transtar Industries: Samples 2-Converter Seal Installers, Samples Update Kits, Hi Perf Bands, Pump Vane, Gear Kit Governor; Zarzour Nissan, Inc: Samples-Pan Assy Oil, Samples-Bolt, Samples-1 Resistor Assy-A, Samples-Retainer Assy-Oil, Seal-Oil Cranks, Gaskets, Gasket Reta; Parts Distributors, Inc: World Samples-2 Trans Seals; Sandusky Motors Inc: 1-World Seal B Samples; Sandusky Toyota Chrysler Plmo: Sample 1-Gasket-Cyl, Sample 1-Gasket Thr, O Ring ELT – samples relating to appellant's quality systems and shadow boards
  - Ford Motor Company: Transparencies for Car & Truck Text & Illus, Vol #11 Cross Ref Lis – described as a data reference for sales, direct marketing for specific customer
  - ICX Corporation: Total Fleet Solutions, Holland Toyota Picker Invoice has no Tax PD; Total Fleet Solutions Inc. – Milan Monthly Maintenance Bill for Phases I&II (Lifts, Pickers, Etc) – maintenance costs on material handling equipment, i.e., Toyota Picker, previously referenced

<sup>14</sup> Meier testified that his testimony would be the same for references made throughout the assessment to samples.

Also included among those purchases on which use tax was assessed were a number of items acquired by several of appellant's employees<sup>15</sup> using company-issued credit cards. Although Meier was unable to testify regarding the precise nature or use of such items purchased, appellant nevertheless posits that "since each employee was governed by corporate policy in making these credit card purchases, the fact that a particular employee's card was charged with a purchase supports the inference that employee credit card purchases were for those purposes -- and only for those purposes -- for which corporate policy permitted that employee to use the corporate credit card." Appellant's brief at 20.

The Supreme Court has held that this board is to be accorded wide latitude in determining the weight to be given evidence presented by parties to an appeal and the credibility of witnesses who appear before us. *Cardinal Fed. S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13. Nevertheless, in considering the evidence offered by appellant in support of its appeals, we must remain cognizant of those decisions directing that "[s]tatutes relating to exemption or exception from taxation are to be strictly construed, and one claiming such exemption or exception must affirmatively establish his right thereto." *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus.

We find Meier sufficiently knowledgeable regarding several of the contested purchases, and that appellant's purchases associated with its Toyota Standup Reach Truck, Toyota Sit Down Rider CB, Toyota Forklift, Upright Lift Truck, Toyota Walkie Rider Pallet Truck, and Forklift Battery/Charger and Guidance Wire fall within the requested exemption in that they are used in storing, transporting, and handling appellant's product and inventory

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<sup>15</sup> These employees included John Wozniak, who works in the product design department, Tammy Jones, who is part of the customer service group, Tony Darr, a product technician, Ryan Rostetter, a product design

within its warehousing operations. As for the purchases which were the subject of use tax assessment discussed by Meier, we find the purchases of items incorporated into visual demonstration boards, i.e., "sample," qualify for exemption as they are used to provide illustration to appellant's assembly line employees as well as its quality control personnel to ensure the correct individual components are included within specific product kits. We also agree that qualifying for exemption as storing, transporting, or handling, are the aforementioned column protection devices, compressed air lines, sprinkler and conveyor systems, guidance wires and batteries, maintenance costs associated with its Toyota truck, pickers, etc., and the temporary storage trailers.

We do not find appellant's purchases associated with its warehouse time clock or the transparencies, the use of the latter being unclear, fall within R.C. 5739.02(B)(42)(j). While we acknowledge the telecommunications component upon which eligibility for the exemption is conditioned, exemption is only accorded items *used* in "storing, transporting, mailing, or otherwise handling" inventory, so we are unable to extend the exemption to items apparently acquired for use, which Meier was capable of testifying to at best only generally, in its customer service department, i.e., copy machine, recabling/networking, and headsets. We find overly speculative and unsupported appellant's suggestion that we accept Meier's sweeping conclusion that merely because an employee works in a particular division and uses a corporate-issued credit card, then all of his/her purchases must necessarily have been used in an exempt manner. In the absence of the testimony of individuals personally familiar with such transactions, we cannot assume they are exempt.

Footnote contd. \_\_\_\_\_  
engineer, Brian (Bill) Cook, who works in the information technology department, Mary Jane Uther, who also works in the information technology department, and Paula Rice, who works in the quality department.

Based upon the foregoing, we find appellant's arguments to be well-taken in part, resulting in our decision today to affirm in part and reverse in part the commissioner's final determinations. It is the order of this board that these matters be remanded to the commissioner with instructions to grant appellant's application for refund as noted herein and to adjust the amount of use tax assessment and preassessment interest previously assessed consistent with the preceding discussion.

ohiosearchkeybta

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

  
Sally F. Van Meter, Board Secretary

LEXSTAT ORC ANN. 5717.04

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5717. APPEALS

Go to the Ohio Code Archive Directory

ORC Ann. 5717.04 (2010)

§ 5717.04. Appeal from decision of board of tax appeals to supreme court; parties who may appeal

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management, if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by *section 5717.03 of the Revised Code*.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the

appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the tax commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

**HISTORY:**

GC § 5611-2; 107 v 550; 116 v 104(123), § 2; 118 v 344(355); 119 v 34(49); Bureau of Code Revision, 10-1-53; 125 v 250 (Eff 10-2-53); 135 v S 174 (Eff 12-4-73); 137 v H 634 (Eff 8-15-77); 140 v H 260 (Eff 9-27-83); 142 v H 231. Eff 10-5-87; 153 v H 1, § 101.01, eff. 10-16-09.

## FOCUS - 1 of 39 DOCUMENTS

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.01 (2010)

§ 5739.01. Definitions

As used in this chapter:

- (A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.
- (B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:
- (1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;
  - (2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;
  - (3) All transactions by which:
    - (a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would not be subject to the tax imposed by *section 5739.02 of the Revised Code*;
    - (b) An item of tangible personal property is or is to be installed, except property, the purchase of which would not be subject to the tax imposed by *section 5739.02 of the Revised Code* or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;
    - (c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;
    - (d) Until August 1, 2003, industrial laundry cleaning services are or are to be provided and, on and after August 1, 2003, laundry and dry cleaning services are or are to be provided;
    - (e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An "affiliated group" means two or more persons related in such a way that one person owns or

controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service, including prepaid calling service, prepaid wireless calling service, or ancillary service, is or is to be provided, but not including coin-operated telephone service;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided;

(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;

(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.

(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in *section 5735.01 of the Revised Code*, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under *49 U.S.C. 41102*;

(s) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.

(t) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that has less than five thousand dollars in sales of such service during the calendar year.

(u) Electronic publishing service is or is to be provided to a consumer for use in business, except that such transactions occurring between members of an affiliated group, as defined in division (B)(3)(e) of this section, are not sales.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in *section 5739.03 of the Revised Code*, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale;

(9) On and after August 1, 2003, all transactions by which tangible personal property is or is to be stored, except such property that the consumer of the storage holds for sale in the regular course of business;

(10) All transactions in which "guaranteed auto protection" is provided whereby a person promises to pay to the consumer the difference between the amount the consumer receives from motor vehicle insurance and the amount the consumer owes to a person holding title to or a lien on the consumer's motor vehicle in the event the consumer's motor vehicle suffers a total loss under the terms of the motor vehicle insurance policy or is stolen and not recovered, if the protection and its price are included in the purchase or lease agreement.

(11) (a) Except as provided in division (B)(11)(b) of this section, on and after October 1, 2009, all transactions by which health care services are paid for, reimbursed, provided, delivered, arranged for, or otherwise made available by a medicaid health insuring corporation pursuant to the corporation's contract with the state.

(b) If the centers for medicare and medicaid services of the United States department of health and human services determines that the taxation of transactions described in division (B)(11)(a) of this section constitutes an impermissible health care-related tax under section 1903(w) of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 1396b(w), as amended, and regulations adopted thereunder, the director of job and family services shall notify the tax commissioner of that determination. Beginning with the first day of the month following that notification, the transactions described in division (B)(11)(a) of this section are not sales for the purposes of this chapter or Chapter 5741. of the Revised Code. The tax commissioner shall order that the collection of taxes under sections 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], and 5741.023 [5741.02.3] of the Revised Code shall cease for transactions occurring on or after that date.

Except as provided in this section, "sale" and "selling" do not include transfers of interest in leased property where the original lessee and the terms of the original lease agreement remain unchanged, or professional, insurance, or personal service transactions that involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D) (1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4) (a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale.

(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B)(42)(f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter.

(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes.

(5) A person who makes sales of any of the services listed in division (B)(3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E)(1) of this section.

(6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by that person and used in performing the service, except for packaging materials sold by such person in a transaction separate from the service.

(7) In the case of a transaction for health care services under division (B)(11) of this section, a medicaid health insuring corporation is the consumer of such services. The purchase of such services by a medicaid health insuring corporation is not subject to the exception for resale under division (E)(1) of this section or to the exemptions provided under divisions (B)(12), (18), (19), and (22) of section 5739.02 of the Revised Code.

(E) "Retail sale" and "sales at retail" include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H) (1) (a) "Price," except as provided in divisions (H)(2), (3), and (4) of this section, means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(i) The vendor's cost of the property sold;

(ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, including the tax imposed under Chapter 5751. of the Revised Code, and any other expense of the vendor;

(iii) Charges by the vendor for any services necessary to complete the sale;

(iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing.

(v) Installation charges;

(vi) Credit for any trade-in.

(b) "Price" includes consideration received by the vendor from a third party, if the vendor actually receives the consideration from a party other than the consumer, and the consideration is directly related to a price reduction or discount on the sale; the vendor has an obligation to pass the price reduction or discount through to the consumer; the amount of the consideration attributable to the sale is fixed and determinable by the vendor at the time of the sale of the item to the consumer; and one of the following criteria is met:

(i) The consumer presents a coupon, certificate, or other document to the vendor to claim a price reduction or discount where the coupon, certificate, or document is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any vendor to whom the coupon, certificate, or document is presented;

(ii) The consumer identifies the consumer's self to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group or organization.

(iii) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the consumer, or on a coupon, certificate, or other document presented by the consumer.

(c) "Price" does not include any of the following:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 [1547.54.3] of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in this division, "watercraft" includes an outdrive unit attached to the watercraft.

(4) In the case of transactions for health care services under division (B)(11) of this section, "price" means the amount of managed care premiums received each month by a medicaid health insuring corporation.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to *section 5739.121 [5739.12.1] of the Revised Code*. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in division (G) of *section 5739.09 of the Revised Code*.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or transportation of property or personnel to or from a place where a service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property that is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and that retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation, or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used directly in the rendition of a public utility service. In this definition, "public utility" includes a citizen of the United States holding, and required to hold, a certificate of public convenience and necessity issued under *49 U.S.C. 41102*.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county that is a transit authority, the fiscal officer of the county transit board if one is appointed pursuant to *section 306.03 of the Revised Code* or the county auditor if the board of county commissioners operates the county transit system.

(U) "Transit authority" means a regional transit authority created pursuant to *section 306.31 of the Revised Code* or a county in which a county transit system is created pursuant to *section 306.01 of the Revised Code*. For the purposes

of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority that includes territory in more than one county must include all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county that is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county that is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y) (1) (a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

For transactions occurring on or after the effective date of the amendment of this section by H.B. 157 of the 127th general assembly, December 21, 2007, "electronic information services" does not include electronic publishing as defined in division (LLL) of this section.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;

(j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) (1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where the consumer's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;

(h) Ancillary service;

(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.

(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division:

(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.

- (b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.
- (c) "Directory assistance" means an ancillary service of providing telephone number or address information.
- (d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service.
- (e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900" service and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer.

(4) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(5) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile telecommunications service as well as other non-telecommunications services, including the download of digital products delivered electronically, and content and ancillary services, that must be paid for in advance and that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(6) "Value-added non-voice data service" means a telecommunications service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(7) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(8) "Customer" has the same meaning as in *section 5739.034 [5739.03.4] of the Revised Code*.

(BB) "Laundry and dry cleaning services" means removing soil or dirt from towels, linens, articles of clothing, or other fabric items that belong to others and supplying towels, linens, articles of clothing, or other fabric items. "Laundry and dry cleaning services" does not include the provision of self-service facilities for use by consumers to remove soil or dirt from towels, linens, articles of clothing, or other fabric items.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not in-

clude special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and also means conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of *section 5739.011 [5739.01.1] of the Revised Code*, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the calendar year.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so provided or supplied receive their wages, salary, or other compensation from the provider or supplier of the employment service or from a third party that provided or supplied the personnel to the provider or supplier. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the

facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

(OO) "Livestock" means farm animals commonly raised for food or food production, and includes but is not limited to cattle, sheep, goats, swine, and poultry. "Livestock" does not include invertebrates, fish, amphibians, reptiles, horses, domestic pets, animals for use in laboratories or for exhibition, or other animals not commonly raised for food or food production.

(PP) "Livestock structure" means a building or structure used exclusively for the housing, raising, feeding, or sheltering of livestock, and includes feed storage or handling structures and structures for livestock waste handling.

(QQ) "Horticulture" means the growing, cultivation, and production of flowers, fruits, herbs, vegetables, sod, mushrooms, and nursery stock. As used in this division, "nursery stock" has the same meaning as in *section 927.51 of the Revised Code*.

(RR) "Horticulture structure" means a building or structure used exclusively for the commercial growing, raising, or overwintering of horticultural products, and includes the area used for stocking, storing, and packing horticultural products when done in conjunction with the production of those products.

(SS) "Newspaper" means an unbound publication bearing a title or name that is regularly published, at least as frequently as biweekly, and distributed from a fixed place of business to the public in a specific geographic area, and that contains a substantial amount of news matter of international, national, or local events of interest to the general public.

(TT) "Professional racing team" means a person that employs at least twenty full-time employees for the purpose of conducting a motor vehicle racing business for profit. The person must conduct the business with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. A "motor racing vehicle" means a vehicle for which the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(UU) (1) "Lease" or "rental" means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. "Lease" or "rental" includes future options to purchase or extend, and agreements described in 26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property. "Lease" or "rental" does not include:

(a) A transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments;

(b) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one per cent of the total required payments;

(c) Providing tangible personal property along with an operator for a fixed or indefinite period of time, if the operator is necessary for the property to perform as designed. For purposes of this division, the operator must do more than maintain, inspect, or set-up the tangible personal property.

(2) "Lease" and "rental," as defined in division (UU) of this section, shall not apply to leases or rentals that exist before June 26, 2003.

(3) "Lease" and "rental" have the same meaning as in division (UU)(1) of this section regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws.

(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling.

(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code.

(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service.

(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software.

(ZZ) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the consumer or at the direction of the consumer when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the consumer to the direct mail vendor for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(AAA) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(BBB) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(CCC) "Delivered electronically" means delivery of computer software from the seller to the purchaser by means other than tangible storage media.

(DDD) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. If a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(EEE) (1) "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco.

(2) As used in division (EEE)(1) of this section:

(a) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one per cent or more of alcohol by volume.

(b) "Dietary supplements" means any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by 21 C.F.R. 101.36; and that contains one or more of the following dietary ingredients:

- (i) A vitamin;
- (ii) A mineral;
- (iii) An herb or other botanical;
- (iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE)(2)(b)(i) to (v) of this section.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.

(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.

(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.

(HHH) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, and is not worn in or on the body. "Durable medical equipment" does not include mobility enhancing equipment.

(III) "Mobility enhancing equipment" means equipment, including repair and replacement parts for such equipment, that is primarily and customarily used to provide or increase the ability to move from one place to another and is appropriate for use either in a home or a motor vehicle, that is not generally used by persons with normal mobility, and that does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer. "Mobility enhancing equipment" does not include durable medical equipment.

(JJJ) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the human body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. As used in this division, "prosthetic device" does not include corrective eyeglasses, contact lenses, or dental prosthesis.

(KKK) (1) "Fractional aircraft ownership program" means a program in which persons within an affiliated group sell and manage fractional ownership program aircraft, provided that at least one hundred airworthy aircraft are operated in the program and the program meets all of the following criteria:

(a) Management services are provided by at least one program manager within an affiliated group on behalf of the fractional owners.

(b) Each program aircraft is owned or possessed by at least one fractional owner.

(c) Each fractional owner owns or possesses at least a one-sixteenth interest in at least one fixed-wing program aircraft.

(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners.

(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program.

(2) As used in division (KKK)(1) of this section:

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section.

(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (KKK)(1)(e) of this section.

(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (KKK)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.

(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (KKK)(1)(e) of this section, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the fractional owner; the satisfaction of record-keeping requirements; and the development and use of an operations manual and a maintenance manual for the fractional aircraft ownership program.

(e) "Program manager" means the person that offers management services to fractional owners pursuant to a management services agreement under division (KKK)(1)(e) of this section.

(LLL) "Electronic publishing" means providing access to one or more of the following primarily for business customers, including the federal government or a state government or a political subdivision thereof, to conduct research: news; business, financial, legal, consumer, or credit materials; editorials, columns, reader commentary, or features; photos or images; archival or research material; legal notices, identity verification, or public records; scientific, educational, instructional, technical, professional, trade, or other literary materials; or other similar information which has been gathered and made available by the provider to the consumer in an electronic format. Providing electronic publishing includes the functions necessary for the acquisition, formatting, editing, storage, and dissemination of data or information that is the subject of a sale.

(MMM) "Medicaid health insuring corporation" means a health insuring corporation that holds a certificate of authority under Chapter 1751. of the Revised Code and is under contract with the department of job and family services pursuant to section 5111.17 of the Revised Code.

(NNN) "Managed care premium" means any premium, capitation, or other payment a medicaid health insuring corporation receives for providing or arranging for the provision of health care services to its members or enrollees residing in this state.

#### HISTORY:

GC § 5546-1; 115 v PII, 306; 116 v 41; 116 v 248; 116 v PII, 69; 116 v PII, 323; 119 v 389; 121 v 247; 122 v 439; 122 v 725; Bureau of Code Revision, 10-1-53; 125 v 305 (Eff 10-13-53); 126 v 157; 128 v 421; 128 v 1303 (Eff 7-29-59); 129 v 582(973) (Eff 1-10-61); 129 v 1164 (Eff 1-1-62); 132 v S 350 (Eff 9-1-67); 132 v H 919 (Eff 12-12-67); 135 v S 241 (Eff 10-30-73); 135 v S 161 (Eff 11-21-73); 135 v S 244 (Eff 6-13-74); 135 v S 544 (Eff 6-29-74); 136 v H 1 (Eff 6-13-75); 136 v H 1347 (Eff 8-27-76); 136 v H 1005 (Eff 8-27-76); 137 v H 1 (Eff 8-26-77); 138 v S 16 (Eff 10-29-79); 138 v H 904 (Eff 12-14-79); 138 v H 1032 (Eff 10-1-80); 139 v H 275 (Eff 8-1-81); 139 v H 694 (Eff 11-15-81); 139 v H 694, §§ 205, 206 (Eff 8-1-82); 139 v H 552 (Eff 11-24-81); 139 v H 552, §§ 25, 26 (Eff 8-1-82); 139 v H 671 (Eff 12-19-81); 139 v H 671, §§ 3, 4 (Eff 8-1-82); 139 v S 530 (Eff 6-25-82); 139 v S 530, §§ 28, 29 (Eff 8-1-82); 140 v H 291 (Eff 7-1-83); 140 v H 794 (Eff 7-6-84); 140 v S 112 (Eff 1-10-85); 141 v H 335 (Eff 12-11-85); 141 v H 54 (Eff 9-17-86); 142 v H 159 (Eff 3-13-87); 142 v H 171 (Eff 7-1-87); 142 v S 92 (Eff 10-20-87); 142 v H 274 (Eff 7-20-87); 142 v H 689 (Eff 2-25-88); 142 v S 386 (Eff 3-29-88); 143 v H 111 (Eff 7-1-89); 143 v H 531 (Eff 7-1-90); 143 v H 365 (Eff 4-1-90); 144 v H 298 (Eff 8-1-91); 144 v S 361 (Eff 7-1-93); 144 v H 791 (Eff 3-15-93); 144 v H 904 (Eff 1-1-93); 145 v S 122 (Eff 6-30-93); 145 v H 152 (Eff 7-1-93); 145 v H 715 (Eff 4-22-94); 145 v H 632 (Eff 7-22-94); 146 v H 61 (Eff 10-25-95); 146 v S 266 (Eff 11-20-96); 147 v H 215 (Eff 9-29-97); 147 v S 173 (Eff 1-1-2000); 148 v H 612 (Eff 9-29-2000); 149 v H 94 (Eff 9-5-2001); 149 v H 405 (Eff 12-13-2001); 149 v S 143 (Eff 6-21-2002); 149 v H 524 (Eff 6-28-2002); 149 v S 200. Eff 9-6-2002; 150 v H 95, § 1, eff. 6-26-03; 150 v S 37, §§ 1, 3, eff. 10-21-03; 151 v S 26, § 1, eff. 6-2-05; 151 v H 66, § 101.01, eff. 6-30-05, 7-1-05, 1-1-06; 151 v H 293, § 1, eff. 1-1-07; 151 v H 699, § 101.01, eff. 3-29-07; 152 v H 157, § 1, eff. 12-21-07; 152 v H 562, § 101.01, eff. 9-23-08; 153 v H 1, § 101.01, eff. 7-17-09.

## FOCUS - 2 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.011 (2010)

§ 5739.011. Exemptions applicable to manufacturers

(A) As used in this section:

- (1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale and, solely for the purposes of division (B)(12) of this section, a person who meets all the qualifications of that division.
- (2) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.
- (3) "Materials handling" means the movement of the product being or to be manufactured, during which movement the product is not undergoing any substantial change or alteration in its state or form.
- (4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.
- (5) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.
- (6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or preproduction storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (B)(42)(g) of section 5739.02 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

- (1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation;
- (2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation; or, excluding motor vehicles licensed to operate on public highways, equipment used in intraplant or interplant transfers of work in process where the plant or plants between which such transfers occur are manufacturing facilities operated by the same person;
- (3) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and that are an integral part of the manufacturing operation;

(4) Machinery, equipment, and other tangible personal property used during the manufacturing operation that control, physically support, produce power for, lubricate, or are otherwise necessary for the functioning of production machinery and equipment and the continuation of the manufacturing operation;

(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale;

(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product;

(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility;

(8) Coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; machinery, equipment, and other tangible personal property used to treat, filter, pump, or otherwise make the substance suitable for use in the manufacturing operation; and machinery and equipment used for, and fuel consumed in, producing electricity for use in the manufacturing operation;

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility;

(11) Parts, components, and repair and installation services for items described in division (B) of this section.

(12) Machinery and equipment, detergents, supplies, solvents, and any other tangible personal property located at a manufacturing facility that are used in the process of removing soil, dirt, or other contaminants from, or otherwise preparing in a suitable condition for use, towels, linens, articles of clothing, floor mats, mop heads, or other similar items, to be supplied to a **consumer** as part of laundry and dry cleaning services as defined in division (BB) of *section 5739.01 of the Revised Code*, only when the towels, linens, articles of clothing, floor mats, mop heads, or other similar items belong to the provider of the services;

(13) Equipment and supplies used to clean processing equipment that is part of a continuous manufacturing operation to produce milk, ice cream, yogurt, cheese, and similar dairy products for human consumption.

(C) For purposes of division (B)(42)(g) of *section 5739.02 of the Revised Code*, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record-keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) Except as provided in division (B)(13) of this section, machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

(9) Motor vehicles registered for operation on public highways.

(D) For purposes of division (B)(42)(g) of *section 5739.02 of the Revised Code*, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

**HISTORY:**

143 v H 531 (Eff 7-1-90); 144 v H 904 (Eff 1-1-93); 148 v S 3 (Eff 10-5-99); 149 v S 200. Eff 9-6-2002; 150 v H 95, § 1, eff. 6-26-03; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 149, § 1, eff. 5-1-07.

## FOCUS - 3 of 39 DOCUMENTS

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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*ORC Ann. 5739.012 (2010)*

§ 5739.012. Bundled transactions

(A) As used in this section:

(1) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable products and are sold for one non-itemized price. "Bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the consumer of the products included in the transaction.

As used in division (A)(1) of this section:

(a) "Distinct and identifiable products" does not include any of the following:

(i) Packaging, including containers, boxes, sacks, bags, and bottles, and packaging materials, including wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(iii) Items included in the definition of "price" under division (H) of *section 5739.01 of the Revised Code*.

(b) "One non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documents made available to the consumer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(2) "De minimis" means the vendor's or seller's purchase price or sales price of taxable products is ten per cent or less of the total purchase price or sales price of bundled products. Vendors and sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis, and shall use the full term of a service contract to determine if the taxable products are de minimis. Vendors and sellers shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(3) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by *21 C.F.R. 201.66*, and the label includes either a "Drug Facts" panel or a statement of the active ingredients with a list of those ingredients contained in the drug.

(B) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is any of the following:

(1) A retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(2) A retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service;

(3) A transaction that includes taxable products and nontaxable products, and the purchase price or sales price of the taxable products is de minimis;

(4) A retail sale of exempt tangible personal property and taxable tangible personal property where the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies, and the vendor's or seller's purchase price or sales price of the taxable tangible personal property is fifty per cent or less of the total purchase price or sales price of the bundled tangible personal property. Vendors and sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty per cent determination for a transaction.

(C) In the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming service:

(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products shall be subject to tax unless the provider, by reasonable and verifiable standards, can identify the portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(2) If the price is attributable to products that are subject to tax at different tax rates, the total price shall be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(D) In all other cases of bundled transactions, the taxability of the transaction shall be determined by the true object of the consumer entering into the transaction.

#### HISTORY:

151 v H 66, § 101.01, eff. 1-1-06.

## FOCUS - 4 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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*ORC Ann. 5739.02 (2010)*

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 5739.02. Levy of sales tax; purpose; rate; exemptions; presumption of taxability

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) (1) The tax shall be collected as provided in *section 5739.025 [5739.02.5] of the Revised Code*. The rate of the tax shall be five and one-half per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

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

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and of magazine subscriptions and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of *section 5735.14 of the Revised Code*; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of *section 5735.14 of the Revised Code* and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in *section 5727.01 of the Revised Code*, and sales of electricity delivered through wires;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under *section 1548.06 of the Revised Code*, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in *section 4519.01 of the Revised Code*;

(9) (a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986*, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

(b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

(c) Division (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) Except for transactions that are sales under division (B)(3)(r) of *section 5739.01 of the Revised Code*, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986*, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under *section 140.08 of the Revised Code*; and sales to organizations described in division (D) of *section 5709.12 of the Revised Code*.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in *section 5701.13 of the Revised Code*; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of *section 5709.12 of the Revised Code*.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986* when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under *section 307.696 [307.69.6] of the Revised Code*; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(42)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk

tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.

(16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of *section 5739.029 [5739.02.9] of the Revised Code*;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25) (a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under *section 3704.14 of the Revised Code*;

(27) Sales to persons licensed to conduct a food service operation pursuant to *section 3717.43 of the Revised Code*, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

(28) Sales of animals by nonprofit animal adoption services or county humane societies;

(29) Sales of services to a corporation described in division (A) of *section 5709.72 of the Revised Code*, and sales of tangible personal property that qualifies for exemption from taxation under *section 5709.72 of the Revised Code*;

(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of *section 5739.01 of the Revised Code*;

(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of *section 5739.01 of the Revised Code*;

(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;

(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.

(35) (a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(35)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(38) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(39) Sales of used manufactured homes and used mobile homes, as defined in *section 5739.0210 [5739.02.10] of the Revised Code*, made on or after January 1, 2000;

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in *section 5727.01 of the Revised Code*; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

(41) Sales to a person providing services under division (B)(3)(r) of *section 5739.01 of the Revised Code* of tangible personal property and services used directly and primarily in providing taxable services under that section.

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(g) To use the thing transferred, as described in *section 5739.011 of the Revised Code*, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of *section 5739.01 of the Revised Code*, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distrib-

uted outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of *section 5739.01 of the Revised Code* and "direct marketing" has the same meaning as in division (B)(35) of this section.

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of *section 5739.01 of the Revised Code*;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of *section 5739.01 of the Revised Code*, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(n) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of *section 5739.01 of the Revised Code*.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of *section 5739.01 of the Revised Code*.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(48) (a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;

(b) As used in division (B)(48)(a) of this section:

(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.

(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to *section 122.17 of the Revised Code*, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.

(c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.

(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.

(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to *section 5739.021 [5739.02.1]* or *5739.026 [5739.02.6]* of the Revised Code and of transit authorities levying an additional sales tax pursuant to *section 5739.023 [5739.02.3]* of the Revised Code. Except for the discount authorized under *section 5739.12 of the Revised Code* and the effects of any rounding pursuant to *section 5703.055 [5703.05.5]* of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or *section 5739.021 [5739.02.1]*, *5739.023 [5739.02.3]*, or *5739.026 [5739.02.6]* of the Revised Code.

#### HISTORY:

GC § 5546-2; 115 v PtII, 306, § 2; 116 v 41, § 2; 116 v PtII, 69; 116 v PtII, 323; 117 v 761; 122 v 912; 124 v 166; Bureau of Code Revision, 10-1-53; 128 v 421 (Eff 7-1-59); 129 v 1301 (Eff 10-16-61); 129 v 1336 (Eff 1-2-62); 130 v 1347 (Eff 1-23-63); 130 v 1351 (Eff 7-26-63); 131 v 1369 (Eff 9-22-65); 131 v 1374 (Eff 11-5-65); 132 v H 519 (Eff 11-30-67); 132 v S 350 (Eff 9-1-67); 132 v S 207 (Eff 5-3-68); 132 v S 474 (Eff 6-11-68); 134 v S 222 (Eff 12-10-71); 134 v H 475 (Eff 12-20-71); 135 v S 241 (Eff 10-30-73); 135 v H 3 (Eff 11-21-73); 135 v S 244 (Eff 6-13-74); 135 v H 1313 (Eff 9-30-74); 137 v H 291 (Eff 6-15-78); 137 v H 563 (Eff 6-28-78); 137 v H 635 (Eff 8-16-78); 137 v H 8 (Eff 8-29-78); 138 v H 1 (Eff 5-16-79); 138 v H 154 (Eff 8-14-79); 138 v H 355 (Eff 1-1-80); 138 v H 703 (Eff 1-16-81); 138 v H 1112 (Eff 3-23-81); 139 v H 275 (Eff 8-1-81); 139 v H 1 (Eff 8-5-81); 139 v H 694 (Eff 11-15-81); 139 v H 671 (Eff 12-9-81); 139 v S 530 (Eff 6-25-82); 140 v S 231 (Eff 9-20-84); 141 v H 146 (Eff 9-11-85); 141 v H 560 (Eff 9-11-85); 141 v H 335 (Eff 12-11-85); 141 v H 583 (Eff 2-20-86); 141 v H 500 (Eff 5-6-86); 141 v H 54 (Eff 9-17-86); 142 v H 171 (Eff 7-1-87); 142 v S 21 (Eff 10-20-87); 142 v S 92 (Eff 10-20-87); 142 v H 772 (Eff 6-29-88); 142 v S 386 (Eff 3-29-88); 142 v H 708 (Eff 4-19-88); 143 v H 111 (Eff 7-1-89); 143 v S 156 (Eff 12-31-89); 143 v H 531 (Eff 7-1-90); 143 v H 365 (Eff 4-1-90); 144 v H 298 (Eff 8-1-91); 144 v S 131 (Eff 5-15-92); 144 v H 766 (Eff 1-22-93); 144 v H 904 (Eff 1-1-93); 144 v S 359 (Eff 12-22-92); 145 v S 18 (Eff 9-27-93); 145 v H 207 (Eff 6-30-93); 145 v H 152 (Eff 7-1-93); 145 v H 281 (Eff 7-2-93); 145 v H 163 (Eff 5-10-94); 145 v H 715 (Eff 7-22-94); 145 v H 632 (Eff 7-22-94); 146 v H 249 (Eff 7-17-95); 146 v H 117 (Eff 9-29-95); 146 v S 310 (Eff 6-20-96); 147 v H 210 (Eff 3-31-97); 147 v H 215 (Eff 9-29-97); 147 v S 66 (Eff 7-22-98); 147 v H 770 (Eff 6-17-98; Eff 7-22-98, (B)(18), § 33); 147 v S 142 (Eff 3-30-99); 148 v H 163 (Eff 3-31-99); 148 v S 3 (Eff 7-6-99; 10-5-99); 148 v H 223 (Eff 11-3-99); 148 v H 640 (Eff 9-14-2000); 148 v H 612 (Eff 9-29-2000); 148 v H 138 (Eff 11-3-2000); 149 v H 94 (Eff 9-5-2001); 149 v H 117 (Eff 10-8-2001); 149 v S 143 (Eff 6-21-2002); 149 v S 200 (Eff 9-6-2002); 149 v H 371. Eff 10-11-2002; 150 v H 95, § 1, eff. 6-26-03; 150 v S 37, § 1, eff. 10-21-03; 151 v H 66, § 101.01, eff. 6-30-05, 7-1-05; 152 v H 119, § 101.01, eff. 6-30-07; 152 v H 157, § 1, eff. 12-21-07; 152 v H 562, § 101.01, eff. 6-24-08; 152 v H 420, § 101.01, eff. 2-1-09; 153 v H 1, § 101.01, eff. 10-16-09; 153 v S 232, § 1, eff. 6-17-10.

## FOCUS - 5 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.02 (2010)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 5739.02. Levy of sales tax; purpose; rate; exemptions; presumption of taxability

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) (1) The tax shall be collected as provided in *section 5739.025 [5739.02.5] of the Revised Code*. The rate of the tax shall be five and one-half per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

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

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and of magazine subscriptions and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of *section 5735.14 of the Revised Code*; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of *section 5735.14 of the Revised Code* and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in *section 5727.01 of the Revised Code*, and sales of electricity delivered through wires;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under *section 1548.06 of the Revised Code*, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in *section 4519.01 of the Revised Code*;

(9) (a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986*, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.

(b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.

(c) Division (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) Except for transactions that are sales under division (B)(3)(r) of *section 5739.01 of the Revised Code*, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986*, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under *section 140.08 of the Revised Code*; and sales to organizations described in division (D) of *section 5709.12 of the Revised Code*.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in *section 5701.13 of the Revised Code*; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of *section 5709.12 of the Revised Code*.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under *section 501(c)(3) of the Internal Revenue Code of 1986* when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under *section 307.696 [307.69.6] of the Revised Code*; building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under *section 5709.084 [5709.08.4] of the Revised Code* is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(42)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies

used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.

(16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 [5739.02.9] of the Revised Code;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25) (a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales to persons licensed to conduct a food service operation pursuant to *section 3717.43 of the Revised Code*, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

(28) Sales of animals by nonprofit animal adoption services or county humane societies;

(29) Sales of services to a corporation described in division (A) of *section 5709.72 of the Revised Code*, and sales of tangible personal property that qualifies for exemption from taxation under *section 5709.72 of the Revised Code*;

(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of *section 5739.01 of the Revised Code*;

(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of *section 5739.01 of the Revised Code*;

(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;

(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;

(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.

(35) (a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(35)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(38) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

(39) Sales of used manufactured homes and used mobile homes, as defined in *section 5739.0210 [5739.02.10] of the Revised Code*, made on or after January 1, 2000;

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

(41) Sales to a person providing services under division (B)(3)(r) of *section 5739.01 of the Revised Code* of tangible personal property and services used directly and primarily in providing taxable services under that section.

(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(g) To use the thing transferred, as described in *section 5739.011 of the Revised Code*, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of *section 5739.01 of the Revised Code*, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of *section 5739.01 of the Revised Code* and "direct marketing" has the same meaning as in division (B)(35) of this section.

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of *section 5739.01 of the Revised Code*;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of *section 5739.01 of the Revised Code*, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;

(n) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of *section 5739.01 of the Revised Code*.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of *section 5739.01 of the Revised Code*.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(48) (a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;

(b) As used in division (B)(48)(a) of this section:

(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.

(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to *section 122.17 of the Revised Code*, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.

(c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.

(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.

(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to *section 5739.021 [5739.02.1]* or *5739.026 [5739.02.6]* of the Revised Code and of transit authorities levying an additional sales tax pursuant to *section 5739.023 [5739.02.3]* of the Revised Code. Except for the discount authorized under *section 5739.12 of the Revised Code* and the effects of any rounding pursuant to *section 5703.055 [5703.05.5]* of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or *section 5739.021 [5739.02.1]*, *5739.023 [5739.02.3]*, or *5739.026 [5739.02.6]* of the Revised Code.

#### HISTORY:

153 v S 181, § 1, eff. 9-13-10.

## FOCUS - 6 of 39 DOCUMENTS

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\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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*ORC Ann. 5739.021 (2010)*

§ 5739.021. Levy of additional sales tax by county; resolution; referendum; reduction

(A) For the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county, or both, and to pay the expenses of administering such levy, any county may levy a tax at the rate of not more than one per cent at any multiple of one-fourth of one per cent upon every retail sale made in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase the rate of an existing tax to not more than one per cent at any multiple of one-fourth of one per cent.

The tax shall be levied and the rate increased pursuant to a resolution of the board of county commissioners. The resolution shall state the purpose for which the tax is to be levied and the number of years for which the tax is to be levied, or that it is for a continuing period of time. If the tax is to be levied for the purpose of providing additional general revenues and for the purpose of supporting criminal and administrative justice services, the resolution shall state the rate or amount of the tax to be apportioned to each such purpose. The rate or amount may be different for each year the tax is to be levied, but the rates or amounts actually apportioned each year shall not be different from that stated in the resolution for that year. If the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, it must receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for such necessity. The board shall deliver a certified copy of the resolution to the tax commissioner, not later than the sixty-fifth day prior to the date on which the tax is to become effective, which shall be the first day of the calendar quarter.

Prior to the adoption of any resolution under this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be not less than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being not less than ten nor more than thirty days prior to the first hearing.

Except as provided in division (B)(3) of this section, the resolution shall be subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code.

If a petition for a referendum is filed, the county auditor with whom the petition was filed shall, within five days, notify the board of county commissioners and the tax commissioner of the filing of the petition by certified mail. If the board of elections with which the petition was filed declares the petition invalid, the board of elections, within five days, shall notify the board of county commissioners and the tax commissioner of that declaration by certified mail. If the petition is declared to be invalid, the effective date of the tax or increased rate of tax levied by this section shall be the

first day of a calendar quarter following the expiration of sixty -five days from the date the commissioner receives notice from the board of elections that the petition is invalid.

(B) (1) A resolution that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than ninety days after a certified copy of such resolution is transmitted to the board of elections and the election is not held in February or August of any year. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under this division shall go into effect unless approved by a majority of those voting upon it, and, except as provided in division (B)(3) of this section, shall become effective on the first day of a calendar quarter following the expiration of sixty-five days from the date the tax commissioner receives notice from the board of elections of the affirmative vote.

(2) A resolution that is adopted as an emergency measure shall go into effect as provided in division (A) of this section, but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than ninety days after a certified copy of the resolution is transmitted to the board of elections. Upon transmission of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in *section 5739.022 [5739.02.2] of the Revised Code*. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of a calendar quarter following the expiration of sixty -five days after the date the board and tax commissioner receive notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(3) If a vendor that is registered with the central electronic registration system provided for in *section 5740.05 of the Revised Code* makes a sale in this state by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, any tax levied or repealed or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner pursuant to division (H) of this section.

(C) If a resolution is rejected at a referendum or if a resolution adopted after January 1, 1982, as an emergency measure is repealed by the electors pursuant to division (B)(2) of this section or *section 5739.022 [5739.02.2] of the Revised Code*, then for one year after the date of the election at which the resolution was rejected or repealed the board of county commissioners may not adopt any resolution authorized by this section as an emergency measure.

(D) The board of county commissioners, at any time while a tax levied under this section is in effect, may by resolution reduce the rate at which the tax is levied to a lower rate authorized by this section. Any reduction in the rate at which the tax is levied shall be made effective on the first day of a calendar quarter next following the sixty-fifth day after a certified copy of the resolution is delivered to the tax commissioner.

(E) The tax on every retail sale subject to a tax levied pursuant to this section shall be in addition to the tax levied by *section 5739.02 of the Revised Code* and any tax levied pursuant to *section 5739.023 [5739.02.3] or 5739.026 [5739.02.6] of the Revised Code*.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to *section 5741.021 [5741.02.1] of the Revised Code*.

The additional tax levied by the county shall be collected pursuant to *section 5739.025 [5739.02.5] of the Revised Code*. If the additional tax or some portion thereof is levied for the purpose of criminal and administrative justice services, the revenue from the tax, or the amount or rate apportioned to that purpose, shall be credited to a special fund created in the county treasury for receipt of that revenue.

Any tax levied pursuant to this section is subject to the exemptions provided in *section 5739.02 of the Revised Code* and in addition shall not be applicable to sales not within the taxing power of a county under the Constitution of the United States or the Ohio Constitution.

(F) For purposes of this section, a copy of a resolution is "certified" when it contains a written statement attesting that the copy is a true and exact reproduction of the original resolution.

(G) If a board of commissioners intends to adopt a resolution to levy a tax in whole or in part for the purpose of criminal and administrative justice services, the board shall prepare and make available at the first public hearing at which the resolution is considered a statement containing the following information:

(1) For each of the two preceding fiscal years, the amount of expenditures made by the county from the county general fund for the purpose of criminal and administrative justice services;

(2) For the fiscal year in which the resolution is adopted, the board's estimate of the amount of expenditures to be made by the county from the county general fund for the purpose of criminal and administrative justice services;

(3) For each of the two fiscal years after the fiscal year in which the resolution is adopted, the board's preliminary plan for expenditures to be made from the county general fund for the purpose of criminal and administrative justice services, both under the assumption that the tax will be imposed for that purpose and under the assumption that the tax would not be imposed for that purpose, and for expenditures to be made from the special fund created under division (E) of this section under the assumption that the tax will be imposed for that purpose.

The board shall prepare the statement and the preliminary plan using the best information available to the board at the time the statement is prepared. Neither the statement nor the preliminary plan shall be used as a basis to challenge the validity of the tax in any court of competent jurisdiction, nor shall the statement or preliminary plan limit the authority of the board to appropriate, pursuant to *section 5705.38 of the Revised Code*, an amount different from that specified in the preliminary plan.

(H) Upon receipt from a board of county commissioners of a certified copy of a resolution required by division (A) or (D) of this section, or from the board of elections of a notice of the results of an election required by division (A) or (B)(1) or (2) of this section, the tax commissioner shall provide notice of a tax rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.

(I) As used in this section, "criminal and administrative justice services" means the exercise by the county sheriff of all powers and duties vested in that office by law; the exercise by the county prosecuting attorney of all powers and duties vested in that office by law; the exercise by any court in the county of all powers and duties vested in that court; the exercise by the clerk of the court of common pleas, any clerk of a municipal court having jurisdiction throughout the county, or the clerk of any county court of all powers and duties vested in the clerk by law except, in the case of the clerk of the court of common pleas, the titling of motor vehicles or watercraft pursuant to Chapter 1548. or 4505. of the Revised Code; the exercise by the county coroner of all powers and duties vested in that office by law; making payments to any other public agency or a private, nonprofit agency, the purposes of which in the county include the diversion, adjudication, detention, or rehabilitation of criminals or juvenile offenders; the operation and maintenance of any detention facility, as defined in *section 2921.01 of the Revised Code*; and the construction, acquisition, equipping, or repair of such a detention facility, including the payment of any debt charges incurred in the issuance of securities pursuant to Chapter 133. of the Revised Code for the purpose of constructing, acquiring, equipping, or repairing such a facility.

#### **HISTORY:**

132 v H 919 (Eff 12-12-67); 133 v H 531 (Eff 8-18-69); 133 v H 855 (Eff 5-1-70); 138 v H 1062 (Eff 3-23-81); 139 v H 373 (Eff 1-29-82); 141 v H 3 (Eff 3-6-86); 142 v H 274 (Eff 7-20-87); 143 v H 365 (Eff 4-1-90); 143 v H 841 (Eff 4-5-91); 144 v H 192 (Eff 10-10-91); 145 v H 677 (Eff 4-21-94); 146 v S 158 (Eff 5-8-96); 147 v S 17 (Eff 2-13-97); 149 v S 143 (Eff 1-1-04); 150 v H 95, § 1, eff. 1-1-04; 153 v H 48, § 1, eff. 7-2-10.

## FOCUS - 7 of 39 DOCUMENTS

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 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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*ORC Ann. 5739.022 (2010)*

§ 5739.022. Election to repeal emergency permissive tax

(A) The question of repeal of either a county permissive tax or an increase in the rate of a county permissive tax that was adopted as an emergency measure pursuant to *section 5739.021 or 5739.026 of the Revised Code* may be initiated by filing with the board of elections of the county not less than ninety days before the general election in any year a petition requesting that an election be held on the question. The question of repealing an increase in the rate of the county permissive tax shall be submitted to the electors as a separate question from the repeal of the tax in effect prior to the increase in the rate. Any petition filed under this section shall be signed by qualified electors residing in the county equal in number to ten per cent of those voting for governor at the most recent gubernatorial election.

After determination by it that the petition is valid, the board of elections shall submit the question to the electors of the county at the next general election. The election shall be conducted, canvassed, and certified in the same manner as regular elections for county offices in the county. The board of elections shall notify the tax commissioner, in writing, of the election upon determining that the petition is valid. Notice of the election shall also be published in a newspaper of general circulation in the district once a week for two consecutive weeks prior to the election, and, if the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, time, and place of the election. The form of the ballot cast at the election shall be prescribed by the secretary of state; however, the ballot question shall read, "shall the tax (or, increase in the rate of the tax) be retained?"

Yes

No"

The question covered by the petition shall be submitted as a separate proposition, but it may be printed on the same ballot with any other proposition submitted at the same election other than the election of officers.

(B) If a majority of the qualified electors voting on the question of repeal of either a county permissive tax or an increase in the rate of a county permissive tax approve the repeal, the board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. The board of county commissioners shall, on the first day of the calendar quarter following the expiration of sixty-five days after the date the board and the tax commissioner receive the notice, in the case of a repeal of a county permissive tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of a county permissive tax, levy the tax at the rate at which it was imposed immediately prior to the increase in rate and cease to levy the increased rate.

(C) Upon receipt from a board of elections of a notice of the results of an election required by division (B) of this section, the tax commissioner shall provide notice of a tax repeal or rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.

(D) If a vendor that is registered with the central electronic registration system provided for in *section 5740.05 of the Revised Code* makes a sale in this state by printed catalog and the **consumer** computed the tax on the sale based on local rates published in the catalog, any tax repealed or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner pursuant to division (C) of this section.

**HISTORY:**

133 v H 531 (Eff 8-18-69); 135 v S 44 (Eff 9-11-73); 138 v H 1062 (Eff 3-23-81); 139 v H 373 (Eff 1-29-82); 142 v H 274 (Eff 7-20-87); 143 v H 841. Eff 4-5-91; 150 v H 95, § 1, eff. 1-1-04; 151 v H 3, § 1, eff. 5-2-06; 153 v H 48, § 1, eff. 7-2-10.

## FOCUS - 8 of 39 DOCUMENTS

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 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.023 (2010)

§ 5739.023. Transit authority tax levy

(A) (1) For the purpose of providing additional general revenues for a transit authority and paying the expenses of administering such levy, any transit authority as defined in division (U) of *section 5739.01 of the Revised Code* may levy a tax upon every retail sale made in the territory of the transit authority, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, at a rate of not more than one and one-half per cent at any multiple of one-fourth of one per cent and may increase the existing rate of tax to not more than one and one-half per cent at any multiple of one-fourth of one per cent. The tax shall be levied and the rate increased pursuant to a resolution of the legislative authority of the transit authority and a certified copy of the resolution shall be delivered by the fiscal officer to the board of elections as provided in *section 3505.071 of the Revised Code* and to the tax commissioner. The resolution shall specify the number of years for which the tax is to be in effect or that the tax is for a continuing period of time, and the date of the election on the question of the tax pursuant to *section 306.70 of the Revised Code*. The board of elections shall certify the results of the election to the transit authority and tax commissioner.

(2) Except as provided in division (C) of this section, the tax levied by the resolution shall become effective on the first day of a calendar quarter next following the sixty-fifth day following the date the tax commissioner receives from the board of elections the certification of the results of the election on the question of the tax.

(B) The legislative authority may, at any time while the tax is in effect, by resolution fix the rate of the tax at any rate authorized by this section and not in excess of that approved by the voters pursuant to *section 306.70 of the Revised Code*. Except as provided in division (C) of this section, any change in the rate of the tax shall be made effective on the first day of a calendar quarter next following the sixty-fifth day following the date the tax commissioner receives the certification of the resolution; provided, that in any case where bonds, or notes in anticipation of bonds, of a regional transit authority have been issued under *section 306.40 of the Revised Code* without a vote of the electors while the tax proposed to be reduced was in effect, the board of trustees of the regional transit authority shall continue to levy and collect under authority of the original election authorizing the tax a rate of tax that the board of trustees reasonably estimates will produce an amount in that year equal to the amount of principal of and interest on those bonds as is payable in that year.

(C) Upon receipt from the board of elections of the certification of the results of the election required by division (A) of this section, or from the legislative authority of the certification of a resolution under division (B) of this section, the tax commissioner shall provide notice of a tax rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.

## ORC Ann. 5739.023

(D) If a vendor that is registered with the central electronic registration system provided for in *section 5740.05 of the Revised Code* makes a sale in this state by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, any tax levied or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner pursuant to division (C) of this section .

(E) The tax on every retail sale subject to a tax levied pursuant to this section is in addition to the tax levied by *section 5739.02 of the Revised Code* and any tax levied pursuant to *section 5739.021 or 5739.026 of the Revised Code*.

(F) The additional tax levied by the transit authority shall be collected pursuant to *section 5739.025 of the Revised Code*.

(G) Any tax levied pursuant to this section is subject to the exemptions provided in *section 5739.02 of the Revised Code* and in addition shall not be applicable to sales not within the taxing power of a transit authority under the constitution of the United States or the constitution of this state.

(H) The rate of a tax levied under this section is subject to reduction under *section 5739.028 of the Revised Code*, if a ballot question is approved by voters pursuant to that section.

**HISTORY:**

135 v S 544 (Eff 6-29-74); 139 v H 373 (Eff 1-29-82); 140 v H 37 (Eff 6-22-84); 141 v H 583 (Eff 2-20-86); 141 v H 428 (Eff 12-23-86); 142 v H 274 (Eff 7-20-87); 143 v H 365 (Eff 4-1-90); 146 v S 188 (Eff 7-19-95); 149 v S 143 (Eff 7-1-03); 150 v S 47. Eff 1-1-2004; 150 v H 95, § 1, eff. 6-26-03.

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\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5739.026 (2010)*

§ 5739.026. Additional county sales tax for certain purposes

(A) A board of county commissioners may levy a tax of one-fourth or one-half of one per cent on every retail sale in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, and may increase an existing rate of one-fourth of one per cent to one-half of one per cent, to pay the expenses of administering the tax and, except as provided in division (A)(6) of this section, for any one or more of the following purposes provided that the aggregate levy for all such purposes does not exceed one-half of one per cent:

- (1) To provide additional revenues for the payment of bonds or notes issued in anticipation of bonds issued by a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code and to provide additional operating revenues for the convention facilities authority;
- (2) To provide additional revenues for a transit authority operating in the county;
- (3) To provide additional revenue for the county's general fund;
- (4) To provide additional revenue for permanent improvements within the county to be distributed by the community improvements board in accordance with section 307.283 [307.28.3] and to pay principal, interest, and premium on bonds issued under *section 307.284 [307.28.4] of the Revised Code*;
- (5) To provide additional revenue for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements, which improvement or class or group of improvements shall be enumerated in the resolution required by division (D) of this section, and to pay principal, interest, premium, and other costs associated with the issuance of bonds or notes in anticipation of bonds issued pursuant to Chapter 133. of the Revised Code for the acquisition, construction, equipping, or repair of the specific permanent improvement or class or group of permanent improvements;
- (6) To provide revenue for the implementation and operation of a 9-1-1 system in the county. If the tax is levied or the rate increased exclusively for such purpose, the tax shall not be levied or the rate increased for more than five years. At the end of the last year the tax is levied or the rate increased, any balance remaining in the special fund established for such purpose shall remain in that fund and be used exclusively for such purpose until the fund is completely expended, and, notwithstanding *section 5705.16 of the Revised Code*, the board of county commissioners shall not petition for the transfer of money from such special fund, and the tax commissioner shall not approve such a petition.

If the tax is levied or the rate increased for such purpose for more than five years, the board of county commissioners also shall levy the tax or increase the rate of the tax for one or more of the purposes described in divisions (A)(1)

to (5) of this section and shall prescribe the method for allocating the revenues from the tax each year in the manner required by division (C) of this section.

(7) To provide additional revenue for the operation or maintenance of a detention facility, as that term is defined under division (F) of *section 2921.01 of the Revised Code*;

(8) To provide revenue to finance the construction or renovation of a sports facility, but only if the tax is levied for that purpose in the manner prescribed by *section 5739.028 [5739.02.8] of the Revised Code*.

As used in division (A)(8) of this section:

(a) "Sports facility" means a facility intended to house major league professional athletic teams.

(b) "Constructing" or "construction" includes providing fixtures, furnishings, and equipment.

(9) To provide additional revenue for the acquisition of agricultural easements, as defined in *section 5301.67 of the Revised Code*; to pay principal, interest, and premium on bonds issued under *section 133.60 of the Revised Code*; and for the supervision and enforcement of agricultural easements held by the county;

(10) To provide revenue for the provision of ambulance, paramedic, or other emergency medical services.

Pursuant to *section 755.171 [755.17.1] of the Revised Code*, a board of county commissioners may pledge and contribute revenue from a tax levied for the purpose of division (A)(5) of this section to the payment of debt charges on bonds issued under *section 755.17 of the Revised Code*.

The rate of tax shall be a multiple of one-fourth of one per cent, unless a portion of the rate of an existing tax levied under *section 5739.023 [5739.02.3] of the Revised Code* has been reduced, and the rate of tax levied under this section has been increased, pursuant to *section 5739.028 [5739.02.8] of the Revised Code*, in which case the aggregate of the rates of tax levied under this section and *section 5739.023 [5739.02.3] of the Revised Code* shall be a multiple of one-fourth of one per cent. The tax shall be levied and the rate increased pursuant to a resolution adopted by a majority of the members of the board. The board shall deliver a certified copy of the resolution to the tax commissioner, not later than the sixty-fifth day prior to the date on which the tax is to become effective, which shall be the first day of a calendar quarter.

Prior to the adoption of any resolution to levy the tax or to increase the rate of tax exclusively for the purpose set forth in division (A)(3) of this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be no fewer than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county once a week on the same day of the week for two consecutive weeks, the second publication being no fewer than ten nor more than thirty days prior to the first hearing. Except as provided in division (E) of this section, the resolution shall be subject to a referendum as provided in *sections 305.31 to 305.41 of the Revised Code*. If the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, it must receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for the necessity.

If the tax is for more than one of the purposes set forth in divisions (A)(1) to (7), (9), and (10) of this section or is exclusively for one of the purposes set forth in division (A)(1), (2), (4), (5), (6), (7), (9), or (10) of this section, the resolution shall not go into effect unless it is approved by a majority of the electors voting on the question of the tax.

(B) The board of county commissioners shall adopt a resolution under *section 351.02 of the Revised Code* creating the convention facilities authority, or under *section 307.283 [307.28.3] of the Revised Code* creating the community improvements board, before adopting a resolution levying a tax for the purpose of a convention facilities authority under division (A)(1) of this section or for the purpose of a community improvements board under division (A)(4) of this section.

(C) (1) If the tax is to be used for more than one of the purposes set forth in divisions (A)(1) to (7), (9), and (10) of this section, the board of county commissioners shall establish the method that will be used to determine the amount or proportion of the tax revenue received by the county during each year that will be distributed for each of those purposes, including, if applicable, provisions governing the reallocation of a convention facilities authority's allocation if the authority is dissolved while the tax is in effect. The allocation method may provide that different proportions or amounts of the tax shall be distributed among the purposes in different years, but it shall clearly describe the method that will be

used for each year. Except as otherwise provided in division (C)(2) of this section, the allocation method established by the board is not subject to amendment during the life of the tax.

(2) Subsequent to holding a public hearing on the proposed amendment, the board of county commissioners may amend the allocation method established under division (C)(1) of this section for any year, if the amendment is approved by the governing board of each entity whose allocation for the year would be reduced by the proposed amendment. In the case of a tax that is levied for a continuing period of time, the board may not so amend the allocation method for any year before the sixth year that the tax is in effect.

(a) If the additional revenues provided to the convention facilities authority are pledged by the authority for the payment of convention facilities authority revenue bonds for as long as such bonds are outstanding, no reduction of the authority's allocation of the tax shall be made for any year except to the extent that the reduced authority allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(b) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes described in division (A)(4) or (5) of this section, for as long as such bonds or notes are outstanding, no reduction of the county's or the community improvements board's allocation of the tax shall be made for any year, except to the extent that the reduced county or community improvements board allocation is sufficient to meet the debt service requirements for that year on such bonds or notes.

(c) If the additional revenues provided to the transit authority are pledged by the authority for the payment of revenue bonds issued under *section 306.37 of the Revised Code*, for as long as such bonds are outstanding, no reduction of the authority's allocation of tax shall be made for any year, except to the extent that the authority's reduced allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(d) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes issued under *section 133.60 of the Revised Code*, for so long as the bonds or notes are outstanding, no reduction of the county's allocation of the tax shall be made for any year, except to the extent that the reduced county allocation is sufficient to meet the debt service requirements for that year on the bonds or notes.

(D) (1) The resolution levying the tax or increasing the rate of tax shall state the rate of the tax or the rate of the increase; the purpose or purposes for which it is to be levied; the number of years for which it is to be levied or that it is for a continuing period of time; the allocation method required by division (C) of this section; and if required to be submitted to the electors of the county under division (A) of this section, the date of the election at which the proposal shall be submitted to the electors of the county, which shall be not less than ninety days after the certification of a copy of the resolution to the board of elections and, if the tax is to be levied exclusively for the purpose set forth in division (A)(3) of this section, shall not occur in February or August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. If approved by a majority of the electors, the tax shall become effective on the first day of a calendar quarter next following the sixty-fifth day following the date the board of county commissioners and tax commissioner receive from the board of elections the certification of the results of the election, except as provided in division (E) of this section.

(2) (a) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of the tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than ninety days after the resolution is certified to the board of elections and the election is not held in February or August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (D)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and, except as provided in division (E) of this section, not until the first day of a calendar quarter following the expiration of sixty-five days from the date the tax commissioner receives notice from the board of elections of the affirmative vote.

(b) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is adopted as an emergency measure shall become effective as provided in division (A) of this section, but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the

electors of the county at the next general election in the county occurring not less than ninety days after the resolution is certified to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in *section 5739.022 [5739.02.2] of the Revised Code*. The board of elections shall notify the board of county commissioners and the tax commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of a calendar quarter following the expiration of sixty-five days after the date the board and tax commissioner received notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(c) A board of county commissioners, by resolution, may reduce the rate of a tax levied exclusively for the purpose set forth in division (A)(3) of this section to a lower rate authorized by this section. Any such reduction shall be made effective on the first day of the calendar quarter next following the sixty-fifth day after the tax commissioner receives a certified copy of the resolution from the board.

(E) If a vendor that is registered with the central electronic registration system provided for in *section 5740.05 of the Revised Code* makes a sale in this state by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, any tax levied or repealed or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner pursuant to division (G) of this section.

(F) The tax levied pursuant to this section shall be in addition to the tax levied by *section 5739.02 of the Revised Code* and any tax levied pursuant to *section 5739.021 [5739.02.1] or 5739.023 [5739.02.3] of the Revised Code*.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to *section 5741.023 [5741.02.3] of the Revised Code*.

The additional tax levied by the county shall be collected pursuant to *section 5739.025 [5739.02.5] of the Revised Code*.

Any tax levied pursuant to this section is subject to the exemptions provided in *section 5739.02 of the Revised Code* and in addition shall not be applicable to sales not within the taxing power of a county under the Constitution of the United States or the Ohio Constitution.

(G) Upon receipt from a board of county commissioners of a certified copy of a resolution required by division (A) of this section, or from the board of elections a notice of the results of an election required by division (D)(1), (2)(a), (b), or (c) of this section, the tax commissioner shall provide notice of a tax rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.

#### HISTORY:

141 v H 583 (Eff 2-20-86); 142 v H 274 (Eff 7-20-87); 143 v H 365 (Eff 4-1-90); 143 v H 841 (Eff 4-5-91); 144 v S 131 (Eff 5-15-92); 145 v H 277 (Eff 10-29-93); 146 v S 188 (Eff 7-19-95); 146 v S 61 (Eff 11-19-96); 147 v S 17 (Eff 2-13-97); 147 v S 223 (Eff 4-5-99); 149 v S 200 (Eff 9-6-2002); 149 v S 143 (Eff 7-1-2003); 149 v H 675, § 1.07 (Eff 7-1-03); 150 v S 47, Eff 1-1-2004; 150 v H 95, § 1, eff. 1-1-04; 151 v H 13, § 1, eff. 3-30-05; 151 v H 66, § 101.01, eff. 3-30-05; 151 v H 530, § 101.01, eff. 3-30-06; 153 v H 48, § 1, eff. 7-2-10.

## FOCUS - 10 of 39 DOCUMENTS

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\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX.

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ORC Ann. 5739.027 (2010)

§ 5739.027. Tax on watercraft or outboard motor purchased by nonresident

(A) Notwithstanding *sections 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], and 5741.023 [5741.02.3] of the Revised Code*, the tax due on the sale to a consumer who is a nonresident of this state of a watercraft or outboard motor required to be titled pursuant to Chapter 1548. of the Revised Code, or on the sale of a watercraft documented or to be documented with the United States coast guard, shall be the lesser of the combined tax rate in effect at the location of the vendor or the sales, use, or similar excise tax that the consumer would owe in the state of the consumer's intended titling, registration, or use of the watercraft or outboard motor, if all of the following apply:

- (1) The consumer immediately will remove the watercraft or outboard motor from this state for use outside this state;
- (2) The consumer will title or register the watercraft or outboard motor in another state, if such titling or registration is required;
- (3) The consumer will pay all applicable sales, use, or similar excise taxes due in the state of titling, registration, or use;
- (4) The state of titling, registration, or use grants a credit against its sales, use, or similar excise tax for tax paid to this state;
- (5) The consumer executes the affidavit specified in division (C) of this section.

The vendor shall collect the tax and remit it to the state in the manner specified by the tax commissioner.

(B) If all of the conditions specified in division (A) of this section exist, except that the state of titling, registration, or use does not grant a credit for sales or use tax paid to this state, or that the consumer's ownership or use of the watercraft or outboard motor is exempt or otherwise not taxable in such other state, the consumer may take title to and possession of the watercraft or outboard motor without payment of any sales or use tax to this state.

(C) Every nonresident consumer who purchases a watercraft or outboard motor, as described in division (A) of this section, for immediate removal from this state shall execute an affidavit in triplicate, in such form as the tax commissioner specifies, affirming such facts and specifying the consumer's tax liability in the intended state of titling, registration, or use. The affidavit shall be given to the vendor. The vendor shall retain a copy of the affidavit and file another copy with the clerk of the court of common pleas if the vendor is procuring an Ohio title on behalf of the consumer.

The original copy of the affidavit shall be filed with the tax commissioner in the manner prescribed by the tax commissioner.

(D) If the vendor procures a title on behalf of the nonresident consumer from the clerk of the court of common pleas of the county where the vendor is located, on the sale of a watercraft or outboard motor the vendor shall file the affidavit specified in division (C) of this section with the clerk. The clerk shall issue the title without requiring payment of a sales or use tax.

(E) If the watercraft or outboard motor is purchased by a corporation described in division (B)(6) of *section 5739.01 of the Revised Code*, for purposes of this section the state of residence of the consumer shall be the state of residence of the principal shareholder.

(F) For purposes of this section, the consideration received for watercraft trailers not required to be titled pursuant to Chapter 4505. of the Revised Code and other accessories, which are transferred to a nonresident consumer with the watercraft or outboard motor, is part of the price of the watercraft or outboard motor, provided that such consideration is included in the price of the watercraft or outboard motor as reported by the vendor. Tangible personal property sold separately to the nonresident consumer shall be taxed as otherwise provided in this chapter and Chapter 5741. of the Revised Code.

(G) A vendor who in good faith accepts an affidavit provided by a nonresident consumer pursuant to division (C) of this section may rely upon the representations made in the affidavit.

(H) All provisions of this chapter and of Chapter 5741. of the Revised Code that are not inconsistent with this section apply to transactions described in this section.

(I) Any vendor who makes sales described in this section shall file with the tax commissioner any supplemental report or return the tax commissioner considers necessary for the efficient administration and enforcement of this section.

**HISTORY:**

144 v H 485. Eff 7-8-92.

## FOCUS - 11 of 39 DOCUMENTS

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.029 (2010)

§ 5739.029. Tax on motor vehicles purchased by nonresident consumers

(A) Notwithstanding *sections 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], and 5741.023 [5741.02.3] of the Revised Code*, and except as otherwise provided in division (B) of this section, the tax due under this chapter on the sale of a motor vehicle required to be titled under Chapter 4505. of the Revised Code by a motor vehicle dealer to a consumer that is a nonresident of this state shall be the lesser of the amount of tax that would be due under this chapter and Chapter 5741. of the Revised Code if the total combined rate were six per cent, or the amount of tax that would be due to the state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use.

(B) No tax is due under this section, any other section of this chapter, or Chapter 5741. of the Revised Code under any of the following circumstances:

(1) (a) The consumer intends to immediately remove the motor vehicle from this state for use outside this state;

(b) Upon removal of the motor vehicle from this state, the consumer intends to title or register the vehicle in another state if such titling or registration is required;

(c) The consumer executes an affidavit as required under division (C) of this section affirming the consumer's intentions under divisions (B)(1)(a) and (b) of this section; and

(d) The state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use provides an exemption under circumstances substantially similar to those described in division (B)(1) of this section.

(2) The state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use does not provide a credit against its sales or use tax or similar excise tax for sales or use tax paid to this state.

(3) The state in which the consumer titles or registers the motor vehicle or to which the consumer removes the vehicle for use does not impose a sales or use tax or similar excise tax on the ownership or use of motor vehicles.

(C) Any nonresident consumer that purchases a motor vehicle from a motor vehicle dealer in this state under the circumstances described in divisions (B)(1)(a) and (b) of this section shall execute an affidavit affirming the intentions described in those divisions. The affidavit shall be executed in triplicate and in the form specified by the tax commissioner. The affidavit shall be given to the motor vehicle dealer.

A motor vehicle dealer that accepts in good faith an affidavit presented under this division by a nonresident consumer may rely upon the representations made in the affidavit.

(D) A motor vehicle dealer making a sale subject to the tax under division (A) of this section shall collect the tax due unless the sale is subject to the exception under division (B) of this section or unless the sale is not otherwise subject to taxes levied under *sections 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], and 5741.023 [5741.02.3] of the Revised Code*. In the case of a sale under the circumstances described in division (B)(1) of this section, the dealer shall retain one copy of the affidavit and file the original and the other copy with the clerk of the court of common pleas. If tax is due under division (A) of this section, the dealer shall remit the tax collected to the clerk at the time the dealer obtains the Ohio certificate of title in the name of the consumer as required under *section 4505.06 of the Revised Code*. The clerk shall forward the original affidavit to the tax commissioner in the manner prescribed by the commissioner.

Unless a sale is excepted from taxation under division (B) of this section, upon receipt of an application for certificate of title a clerk of the court of common pleas shall collect the sales tax due under division (A) of this section. The clerk shall remit the tax collected to the tax commissioner in the manner prescribed by the commissioner.

(E) If a motor vehicle is purchased by a corporation described in division (B)(6) of *section 5739.01 of the Revised Code*, the state of residence of the consumer for the purposes of this section is the state of residence of the corporation's principal shareholder.

(F) Any provision of this chapter or of Chapter 5741. of the Revised Code that is not inconsistent with this section applies to sales described in division (A) of this section.

(G) As used in this section:

(1) For the purposes of this section only, the sale or purchase of a motor vehicle does not include a lease or rental of a motor vehicle subject to division (A)(2) or (3) of *section 5739.02* or division (A)(2) or (3) of *section 5741.02 of the Revised Code*;

(2) "State," except in reference to "this state," means any state, district, commonwealth, or territory of the United States and any province of Canada.

#### **HISTORY:**

152 v H 119, § 101.01, eff. 6-30-07; 152 v H 562, § 101.01, eff. 9-23-08.

## FOCUS - 12 of 39 DOCUMENTS

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.0210 (2010)

§ 5739.0210. Sales tax on manufactured or mobile home

(A) As used in this section and *section 5739.02 of the Revised Code*:

(1) "Manufactured home" has the same meaning as in division (C)(4) of *section 3781.06 of the Revised Code* and includes all skirting, awnings, interior cabinetry, and other accessories and attachments that are permanently attached to and incorporated as part of the home, but does not include any furniture not permanently affixed to the home.

(2) "Manufacturer," "remanufacturer," and "distributor" means a manufacturer, remanufacturer, or distributor of manufactured homes or mobile homes.

(3) "Mobile home" has the same meaning as in division (O) of *section 4501.01 of the Revised Code* and includes all skirting, awnings, interior cabinetry, and other accessories and attachments that are permanently attached to and incorporated as part of the home, but does not include any furniture not permanently affixed to the home.

(4) "New manufactured home" and "new mobile home" means a manufactured or mobile home the legal title to which has never been transferred by a manufacturer, remanufacturer, distributor, or new motor vehicle dealer to a purchaser in this state who is not a manufacturer, remanufacturer, distributor, or new motor vehicle dealer.

(5) "New motor vehicle dealer" has the same meaning as in *section 4517.01 of the Revised Code*.

(6) "Used manufactured home" and "used mobile home" means a manufactured or mobile home the legal title to which is being transferred or previously has been transferred by an owner other than a new motor vehicle dealer.

(B) Notwithstanding other sections of this chapter or Chapter 5741. of the Revised Code, the tax levied under such chapters on the retail sales of manufactured homes and mobile homes sold on or after January 1, 2000, shall be reported and paid as provided in this section. For purposes of this chapter and Chapter 5741. of the Revised Code, a manufactured home or a mobile home sold on or after January 1, 2000, shall not be considered a motor vehicle.

(C) (1) The transfer of a used manufactured home or used mobile home on which the transfer tax imposed by *section 322.06 of the Revised Code* has been paid shall not be considered a sale for purposes of this chapter or Chapter 5741. of the Revised Code and no tax required by this chapter or Chapter 5741. of the Revised Code shall be paid on such transfer.

(2) The taxes imposed by this chapter and Chapter 5741. of the Revised Code do not apply to a new manufactured home or new mobile home that a dealer sells to the United States government or to this state or any of its political subdivisions.

(D) New motor vehicle dealers that purchase new manufactured homes or new mobile homes from a manufacturer, remanufacturer, distributor, or another dealer shall not pay the tax imposed by this chapter to the seller or vendor at the time of purchase.

(E) When a new motor vehicle dealer sells a new manufactured home or new mobile home to a purchaser, other than another new motor vehicle dealer purchasing such home for subsequent sale by the dealer, the new motor vehicle dealer shall be the consumer of such sale and shall remit the tax required by this chapter and Chapter 5741. of the Revised Code. The price on which the tax shall be paid is the aggregate value in money of anything previously paid or delivered, or promised to be paid or delivered, by the new motor vehicle dealer for that dealer's previous purchase of the new manufactured or mobile home from a manufacturer, remanufacturer, distributor, or other new motor vehicle dealer. The price on which the tax shall be paid does not include any amount paid by a new motor vehicle dealer as a refundable deposit for wheels and axles that are used to transfer a new manufactured home or new mobile home to the dealer and to the person who purchases the home from the new motor vehicle dealer to the extent the deposit actually is refunded to the dealer, provided that the amount of the deposit is stated separately from the consideration paid or delivered, or promised to be paid or delivered, for the purchase of the home by the dealer. The separate statement shall appear on the sales agreement or the initial invoice or billing rendered by the manufacturer, remanufacturer, distributor, or other new motor vehicle dealer to the new motor vehicle dealer that is the consumer of the home for the purposes of this division. The tax applies and shall be due from the dealer on the date the new manufactured home or new mobile home is delivered to the purchaser, the date the purchaser remits the full price for the manufactured home or new mobile home to the dealer, or, in the case of a dealer-financed transaction, the date the purchaser completely executes the financing for the new manufactured home or new mobile home, whichever date occurs first. The tax shall be paid at the rate in effect in the county where the new manufactured home or new mobile home is to be titled to the purchaser.

(F) A new motor vehicle dealer shall not charge a tax under this chapter or Chapter 5741. of the Revised Code to the purchaser of a new manufactured home or a new mobile home, but may pass the tax through to the purchaser as part of the dealer's cost of the new manufactured home or new mobile home.

(G) A person performing repairs or improvements to a manufactured home or a mobile home shall be considered the consumer of all property used in the performance of the repairs or improvements and shall not be considered to be making sales of the repairs or improvements.

**HISTORY:**

147 v S 142 (Eff 3-30-99); 148 v H 672. Eff 4-9-2001.

§ 5739.03. **Consumer** to pay tax; collection and reporting of tax by vendor; exemption certificates

(A) Except as provided in section 5739.05 or section 5739.051 [5739.05.1] of the Revised Code, the tax imposed by or pursuant to section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code shall be paid by the **consumer** to the vendor, and each vendor shall collect from the **consumer**, as a trustee for the state of Ohio, the full and exact amount of the tax payable on each taxable sale, in the manner and at the times provided as follows:

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

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the **consumer**, charge the tax imposed by or pursuant to section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code to the account of the **consumer**, which amount shall be collected by the vendor from the **consumer** in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the **consumer**.

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

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:

- (i) A vendor that fraudulently fails to collect tax;
- (ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;

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

(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of *section 5739.033 [5739.03.3] of the Revised Code*, if the item purchased is tangible personal property, other than prewritten computer software.

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

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

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

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

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

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

Any contractor or vendor may request from any contractee a certification of what portion of the property to be transferred under such contract or agreement is to be incorporated into the realty and what portion will retain its status as tangible personal property after installation is completed. The contractor or vendor shall request the certification by certified mail delivered to the contractee, return receipt requested. Upon receipt of such request and prior to entering into the contract or agreement, the contractee shall provide to the contractor or vendor a certification sufficiently detailed to enable the contractor or vendor to ascertain the resulting classification of all materials purchased or fabricated by the contractor or vendor and transferred to the contractee. This requirement applies to a contractee regardless of whether the contractee holds a direct payment permit under *section 5739.031 [5739.02.1] of the Revised Code* or provides to the contractor or vendor an exemption certificate as provided under this section.

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

If a contractee fails to provide such certification upon the request of the contractor or vendor, the contractor or vendor shall comply with the provisions of this chapter and Chapter 5741. of the Revised Code without the certification. If the tax commissioner determines that such compliance has been performed in good faith and that certain property treated as tangible personal property by the contractor or vendor is, in fact, real property, the contractee shall be consid-

ered to be the **consumer** of all materials so incorporated into that real property and shall be liable for the applicable tax, and the construction contractor or vendor shall be excused from any liability on those materials.

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

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

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

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

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

#### **HISTORY:**

GC § 5546-3; 115 v PtII, 306, § 3; 116 v PtII, 69; 116 v PtII, 323; Bureau of Code Revision, 10-1-53; 125 v 308 (Eff 10-13-53); 126 v 723; 128 v 421 (Eff 7-1-59); 129 v 582(976) (Eff 1-10-61); 129 v 1164 (Eff 1-1-62); 129 v 1336 (Eff 1-2-62); 132 v S 319 (Eff 12-9-67); 132 v S 350 (Eff 9-1-67); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 139 v H 694 (Eff 11-15-81); 139 v S 550 (Eff 11-26-82); 139 v H 358 (Eff 3-7-83); 139 v H 358, § 3 (Eff 3-7-85); 140 v H 374 (Eff 9-20-84); 140 v H 374, § 3 (Eff 3-7-85); 140 v S 298 (Eff 9-20-84); 140 v S 298, § 3 (Eff 3-7-85); 140 v H 37 (Eff 6-22-84); 140 v H 37, § 3 (Eff 3-7-85); 140 v H 794 (Eff 7-6-84); 140 v H 794, § 3 (Eff 3-7-85); 141 v H 583 (Eff 2-20-86); 148 v H 612 (Eff 9-29-2000); 149 v S 143, Eff 7-1-2003; 150 v H 95, § 1, eff. 7-1-03; 150 v S 37, § 1, eff. 10-21-03; 151 v H 66, § 101.01, eff. 1-1-06; 151 v H 294, § 1, eff. 9-28-06; 152 v H 429, § 1, eff. 7-1-08; 153 v H 1, § 101.01, eff. 7-17-09.

## FOCUS - 14 of 39 DOCUMENTS

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\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.031 (2010)

§ 5739.031. Direct payment permit

(A) Upon application, the tax commissioner may issue a direct payment permit that authorizes a **consumer** to pay the sales tax levied by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* or the use tax levied by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* directly to the state and waives the collection of the tax by the vendor or seller if payment directly to the state would improve compliance and increase the efficiency of the administration of the tax. The commissioner may adopt rules establishing the criteria for the issuance of such permits.

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

Any permit holder required to file a return and pay the tax under this section whose total payment for any calendar year equals or exceeds the amount shown in *section 5739.032 [5739.03.2] of the Revised Code* shall make each payment required by this section in the second ensuing and each succeeding year by electronic funds transfer as prescribed by, and on or before the dates specified in, *section 5739.032 [5739.03.2] of the Revised Code*, except as otherwise prescribed by that section.

(C) For purposes of reporting and remitting the tax, the price of tangible personal property or services purchased by, or of tangible personal property produced by, the permit holder shall be determined under division (G) of *section 5741.01 of the Revised Code*. Except as otherwise provided in division (E) of *section 5739.033 [5739.03.3] of the Revised Code*, the situs of any purchase transaction made by the permit holder is the location where the tangible personal property or service is received by the permit holder.

(D) It shall be the duty of every permit holder required to make a return and pay its tax under this section to keep and preserve suitable records of purchases together with invoices of purchases, bills of lading, asset ledgers, depreciation schedules, transfer journals, and such other primary and secondary records and documents in such form as the commissioner requires. All such records and other documents shall be open during business hours to the inspection of

the tax commissioner, and shall be preserved for a period of four years, unless the commissioner, in writing, has authorized their destruction or disposal at an earlier date, or by order or by reason of a waiver of the four-year time limitation pursuant to *section 5739.16 of the Revised Code* requires that they be kept longer.

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

(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 [5739.03.3], 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 payment permit shall be considered as a refusal to pay the tax by the person required to issue such notice.

**HISTORY:**

126 v 60 (Eff 7-7-55); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 141 v H 583 (Eff 2-20-86); 144 v S 279 (Eff 4-1-92); 144 v H 791 (Eff 3-15-93); 144 v H 740 (Eff 3-19-93); 149 v S 200. Eff 9-6-2002; 149 v S 143. Eff 7-1-03; 149 v H 675 (Eff 1-1-04); 150 v H 40, § 1, Eff 3-7-03, § 3, eff. 7-1-03; 150 v S 47, eff. 1-1-04; 151 v S 26, § 1, eff. 6-2-05.

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.033 (2010)

§ 5739.033. Sourcing location of sales; exemption claiming multiple points of use

(A) The amount of tax due pursuant to *sections 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], and 5739.026 [5739.02.6] of the Revised Code* is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section or, if applicable, under division (C) of *section 5739.031 [5739.03.1] or section 5739.034 [5739.03.4] of the Revised Code*. This section applies only to a vendor's or seller's obligation to collect and remit sales taxes under *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* or use taxes under *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*. Division (A) of this section does not apply in determining the jurisdiction for which sellers are required to collect the use tax under *section 5741.05 of the Revised Code*. This section does not affect the obligation of a consumer to remit use taxes on the storage, use, or other consumption of tangible personal property or on the benefit realized of any service provided, to the jurisdiction of that storage, use, or consumption, or benefit realized.

(B) (1) Beginning January 1, 2010, retail sales, excluding the lease or rental, of tangible personal property or digital goods shall be sourced to the location where the vendor receives an order for the sale of such property or goods if:

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

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

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

(2) A consumer has no additional liability to this state under this chapter or Chapter 5741. of the Revised Code for tax, penalty, or interest on a sale for which the consumer remits tax to the vendor in the amount invoiced by the vendor if the invoice amount is calculated at either the rate applicable to the location where the consumer receives the property or digital good or at the rate applicable to the location where the order is received by the vendor. A consumer may rely on a written representation by the vendor as to the location where the order for the sale was received by the vendor. If the consumer does not have a written representation by the vendor as to the location where the order was received by the vendor, the consumer may use a location indicated by a business address for the vendor that is available from records that are maintained in the ordinary course of the consumer's business to determine the rate applicable to the location where the order was received.

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

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

(C) Except for sales, other than leases, of titled motor vehicles, titled watercraft, or titled outboard motors as provided in *section 5741.05 of the Revised Code*, or as otherwise provided in this section and *section 5739.034 [5739.03.4] of the Revised Code*, all sales shall be sourced as follows:

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

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

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

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

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

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

(D) (1) (a) Notwithstanding divisions (C)(1) to (5) of this section, a business consumer that is not a holder of a direct payment permit granted under *section 5739.031 [5739.03.1] of the Revised Code*, that purchases a digital good, computer software, except computer software received in person by a business consumer at a vendor's place of business, or a service, and that knows at the time of purchase that such digital good, software, or service will be concurrently available for use in more than one taxing jurisdiction shall deliver to the vendor in conjunction with its purchase an exemption certificate claiming multiple points of use, or shall meet the requirements of division (D)(2) of this section. On receipt of the exemption certificate claiming multiple points of use, the vendor is relieved of its obligation to collect, pay, or remit the tax due, and the business consumer must pay the tax directly to the state.

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

(c) The exemption certificate claiming multiple points of use shall remain in effect for all future sales by the vendor to the business consumer until it is revoked in writing by the business consumer, except as to the business con-

sumer's specific apportionment of a subsequent sale under division (D)(1)(b) of this section and the facts existing at the time of the sale.

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

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

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

(E) A person who holds a direct payment permit issued under *section 5739.031 [5739.03.1] of the Revised Code* is not required to deliver an exemption certificate claiming multiple points of use to a vendor. But such permit holder shall comply with division (D)(1)(b) of this section in apportioning the tax due on a digital good, computer software, or a service for use in business that will be concurrently available for use in more than one taxing jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) If the vendor provides a service specified in division (B)(11) of *section 5739.01 of the Revised Code*, the situs of the sale is the location of the enrollee for whom a medicaid health insurance corporation receives managed care premiums. Such sales shall be sourced to the locations of the enrollees in the same proportion as the managed care premiums received by the medicaid health insuring corporation on behalf of enrollees located in a particular taxing jurisdiction in Ohio as compared to all managed care premiums received by the medicaid health insuring corporation.

#### HISTORY:

144 v H 791 (Eff 3-15-93); 147 v H 215 (Eff 9-29-97); 147 v S 173 (Eff 1-1-2000); 148 v H 612 (Eff 9-29-2000); 149 v S 200 (Eff 9-6-2002); 149 v S 143 (Eff 7-1-2003); 149 v H 675, § 1.07 (Eff 7-1-03); 150 v H 95, § 1, eff. 1-1-04\*\*; 150 v H 95, § 3.16, eff. 7-1-05; 150 v H 127, § 3, eff. 7-1-05; 150 v H 204, § 4, eff. 7-1-05; 150 v S 218, § 1, eff. 1-28-05; 151 v S 26, § 1, eff. 6-2-05; 151 v H 66, § 101.01, eff. 7-1-05; 151 v H 294, § 1, eff. 9-28-06; 152 v H 119, § 101.01, eff. 6-30-07; 153 v H 1, § 101.01, eff. 7-17-09; 152 v H 429, § 1, eff. 1-1-10; 153 v H 1, § 110.20, eff. 1-1-10.

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TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

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ORC Ann. 5739.05 (2010)

§ 5739.05. Powers and duties of tax commissioner; payment by vendor on predetermined basis

(A) The tax commissioner shall enforce and administer *sections 5739.01 to 5739.31 of the Revised Code*, which are hereby declared to be sections which the commissioner is required to administer within the meaning of *sections 5703.17 to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code*. The commissioner may adopt and promulgate, in accordance with *sections 119.01 to 119.13 of the Revised Code*, such rules as the commissioner deems necessary to administer *sections 5739.01 to 5739.31 of the Revised Code*.

(B) Upon application, the commissioner may authorize a vendor to pay on a predetermined basis the tax levied by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* upon sales of things produced or distributed or services provided by such vendor, and the commissioner may waive the collection of the tax from the consumer. The commissioner shall not grant such authority unless the commissioner finds that the granting of the authority would improve compliance and increase the efficiency of the administration of the tax. The person to whom such authority is granted shall post a notice, if required by the commissioner, at the location where the product is offered for sale that the tax is included in the selling price. The commissioner may adopt rules to administer this division.

(C) The commissioner may authorize a vendor to pay, on the basis of a prearranged agreement under this division, the tax levied by *section 5739.02* or pursuant to *section 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, and waive the requirement that the vendor maintain the complete and accurate record of individual taxable sales and tax collected thereon required by *section 5739.11 of the Revised Code*, upon application of the vendor, if the commissioner finds that the conditions of the vendor-applicant's business are such that the maintenance of such records of individual taxable sales and tax collected thereon would impose an unreasonable burden upon the vendor. If the commissioner determines that such unreasonable burden has been imposed, the vendor and the commissioner shall agree to the terms and conditions of a test check to be conducted. If the parties are unable to agree to the terms and conditions of the test check, the application shall be denied. The test check conducted shall determine the proportion that taxable retail sales bear to all of the vendor's retail sales and the ratio which the tax required to be collected under *sections 5739.02, 5739.021 [5739.02.1], and 5739.023 [5739.02.3] of the Revised Code* bears to the receipts from the vendor's taxable retail sales.

The vendor shall collect the tax on the vendor's taxable sales and the vendor's liability for collecting or remitting shall be based upon the proportions and ratios established by the test check, and not upon any other basis of determination, until such time as a subsequent test check is made at the request of either the vendor or the commissioner where either party believes that the nature of the vendor's business has so changed as to make the prior or existing test check no longer representative. The commissioner may give notice to the vendor at any time that the authorization is revoked

or the vendor may notify the commissioner that the vendor no longer elects to report under the authorization. Such notice shall be delivered to the other party personally or by registered mail. The revocation or cancellation is not effective prior to the date of receipt of such notice.

**HISTORY:**

GC § 5546-5; 115 v PtIL 306, § 5; 120 v 358(390), § 2; 124 v 147; Bureau of Code Revision, 10-1-53; 128 v 421 (Eff 7-1-59); 129 v 1164 (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 134 v S 124 (Eff 11-18-71); 135 v S 544 (Eff 6-29-74); 139 v H 694 (Eff 11-15-81); 141 v H 583 (Eff 2-20-86); 149 v S 200. Eff 9-6-2002.

## FOCUS - 18 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.10 (2010)

§ 5739.10. Excise tax on vendor

(A) In addition to the tax levied by *section 5739.02 of the Revised Code* and any tax levied pursuant to *section 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, and to secure the same objectives specified in those sections, there is hereby levied upon the privilege of engaging in the business of making retail sales, an excise tax equal to the tax levied by *section 5739.02 of the Revised Code*, or, in the case of retail sales subject to a tax levied pursuant to *section 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, a percentage equal to the aggregate rate of such taxes and the tax levied by *section 5739.02 of the Revised Code* of the receipts derived from all retail sales, except those to which the excise tax imposed by *section 5739.02 of the Revised Code* is made inapplicable by division (B) of that section.

(B) For the purpose of this section, no vendor shall be required to maintain records of sales of food for human consumption off the premises where sold, and no assessment shall be made against any vendor for sales of food for human consumption off the premises where sold, solely because the vendor has no records of, or has inadequate records of, such sales ; provided that where a vendor does not have adequate records of receipts from the vendor's sales of food for human consumption on the premises where sold, the tax commissioner may refuse to accept the vendor's return and, upon the basis of test checks of the vendor's business for a representative period, and other information relating to the sales made by such vendor, determine the proportion that taxable retail sales bear to all of the vendor's retail sales. The tax imposed by this section shall be determined by deducting from the sum representing five and one-half or six per cent, as applicable under division (A) of this section, or, in the case of retail sales subject to a tax levied pursuant to *section 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, a percentage equal to the aggregate rate of such taxes and the tax levied by *section 5739.02 of the Revised Code* of the receipts from such retail sales, the amount of tax paid to the state or to a clerk of a court of common pleas. The section does not affect any duty of the vendor under *sections 5739.01 to 5739.19 and 5739.26 to 5739.31 of the Revised Code*, nor the liability of any consumer to pay any tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*.

**HISTORY:**

GC § 5546-12a; 116 v PtII, 323; 122 v 912; Bureau of Code Revision, 10-1-53; 128 v 421 (Eff 7-1-59); 129 v 582(977) (Eff 1-10-61); 129 v 1164 (Eff 1-1-62); 129 v 1402 (Eff 1-2-62); 132 v S 350 (Eff 9-1-67); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 139 v H 694 (Eff 11-15-81); 139 v H 694, §§ 205, 206 (Eff 8-1-82); 139 v H 552 (Eff 11-25-81); 139 v H 552, § 25 (Eff 8-1-82); 141 v H 583. Eff 2-20-86; 150 v H 95, § 1, eff. 7-1-03, 1-1-06; 151 v H 66, § 101.01, eff. 6-30-05.



## FOCUS - 19 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5739.12 (2010)*

§ 5739.12. Monthly and semiannual return by vendor, payments; prompt payment discount

(A) (1) Each person who has or is required to have a vendor's license, on or before the twenty-third day of each month, shall make and file a return for the preceding month in the form prescribed by the tax commissioner, and shall pay the tax shown on the return to be due. The return shall be filed electronically using the Ohio business gateway, as defined in *section 718.051 [718.05.1] of the Revised Code*, the Ohio telefile system, or any other electronic means prescribed by the commissioner. Payment of the tax shown on the return to be due shall be made electronically in a manner approved by the commissioner. The commissioner may require a vendor that operates from multiple locations or has multiple vendor's licenses to report all tax liabilities on one consolidated return. The return shall show the amount of tax due from the vendor to the state for the period covered by the return and such other information as the commissioner deems necessary for the proper administration of this chapter. The commissioner may extend the time for making and filing returns and paying the tax, and may require that the return for the last month of any annual or semiannual period, as determined by the commissioner, be a reconciliation return detailing the vendor's sales activity for the preceding annual or semiannual period. The reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period. The commissioner may remit all or any part of amounts or penalties that may become due under this chapter and may adopt rules relating thereto. Such return shall be filed electronically as directed by the tax commissioner, and payment of the amount of tax shown to be due thereon, after deduction of any discount provided for under this section, shall be made electronically in a manner approved by the tax commissioner.

(2) Any person required to file returns and make payments electronically under division (A)(1) of this section may apply to the tax commissioner on a form prescribed by the commissioner to be excused from that requirement. For good cause shown, the commissioner may excuse the person from that requirement and may permit the person to file the returns and make the payments required by this section by nonelectronic means.

(B) (1) If the return is filed and the amount of tax shown thereon to be due is paid on or before the date such return is required to be filed, the vendor shall be entitled to a discount of three-fourths of one per cent of the amount shown to be due on the return.

(2) A vendor that has selected a certified service provider as its agent shall not be entitled to the discount if the certified service provider receives a monetary allowance pursuant to *section 5739.06 of the Revised Code* for performing the vendor's sales and use tax functions in this state. Amounts paid to the clerk of courts pursuant to *section 4505.06 of the Revised Code* shall be subject to the applicable discount. The discount shall be in consideration for prompt payment to the clerk of courts and for other services performed by the vendor in the collection of the tax.

(C) (1) Upon application to the tax commissioner, a vendor who is required to file monthly returns may be relieved of the requirement to report and pay the actual tax due, provided that the vendor agrees to remit to the commissioner payment of not less than an amount determined by the commissioner to be the average monthly tax liability of the vendor, based upon a review of the returns or other information pertaining to such vendor for a period of not less than six months nor more than two years immediately preceding the filing of the application. Vendors who agree to the above conditions shall make and file an annual or semiannual reconciliation return, as prescribed by the commissioner. The reconciliation return shall be filed electronically as directed by the tax commissioner, and payment of the amount of tax shown to be due thereon, after deduction of any discount provided in this section, shall be made electronically in a manner approved by the commissioner. Failure of a vendor to comply with any of the above conditions may result in immediate reinstatement of the requirement of reporting and paying the actual tax liability on each monthly return, and the commissioner may at the commissioner's discretion deny the vendor the right to report and pay based upon the average monthly liability for a period not to exceed two years. The amount ascertained by the commissioner to be the average monthly tax liability of a vendor may be adjusted, based upon a review of the returns or other information pertaining to the vendor for a period of not less than six months nor more than two years preceding such adjustment.

(2) The commissioner may authorize vendors whose tax liability is not such as to merit monthly returns, as ascertained by the commissioner upon the basis of administrative costs to the state, to make and file returns at less frequent intervals. When returns are filed at less frequent intervals in accordance with such authorization, the vendor shall be allowed the discount provided in this section in consideration for prompt payment with the return, provided the return is filed and payment is made of the amount of tax shown to be due thereon, at the time specified by the commissioner, but a vendor that has selected a certified service provider as its agent shall not be entitled to the discount.

(D) Any vendor who fails to file a return or to pay the full amount of the tax shown on the return to be due in the manner prescribed under this section and the rules of the commissioner may, for each such return, be required to forfeit and pay into the state treasury an additional charge not exceeding fifty dollars or ten per cent of the tax required to be paid for the reporting period, whichever is greater, as revenue arising from the tax imposed by this chapter, and such sum may be collected by assessment in the manner provided in *section 5739.13 of the Revised Code*. The commissioner may remit all or a portion of the additional charge and may adopt rules relating to the imposition and remission of the additional charge.

(E) If the amount required to be collected by a vendor from consumers is in excess of the applicable percentage of the vendor's receipts from sales that are taxable under *section 5739.02 of the Revised Code*, or in the case of sales subject to a tax levied pursuant to *section 5739.021 [5739.02.1]*, *5739.023 [5739.02.3]*, or *5739.026 [5739.02.6] of the Revised Code*, in excess of the percentage equal to the aggregate rate of such taxes and the tax levied by *section 5739.02 of the Revised Code*, such excess shall be remitted along with the remittance of the amount of tax due under *section 5739.10 of the Revised Code*.

(F) The commissioner, if the commissioner deems it necessary in order to insure the payment of the tax imposed by this chapter, may require returns and payments to be made for other than monthly periods.

(G) Any vendor required to file a return and pay the tax under this section whose total payment for a year equals or exceeds the amount shown in division (A) of *section 5739.122 [5739.12.2] of the Revised Code* is subject to the accelerated tax payment requirements in divisions (B) and (C) of that section. For a vendor that operates from multiple locations or has multiple vendor's licenses, in determining whether the vendor's total payment equals or exceeds the amount shown in division (A) of that section, the vendor's total payment amount shall be the amount of the vendor's total tax liability for the previous calendar year for all of the vendor's locations or licenses.

#### HISTORY:

152 v H 562, § 101.01, eff. 1-1-09.

## FOCUS - 20 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5739.121 (2010)*

§ 5739.121. Bad debt deduction

(A) As used in this section, "bad debt" means any debt that has become worthless or uncollectible in the time period between a vendor's preceding return and the present return, has been uncollected for at least six months, and that may be claimed as a deduction pursuant to the "Internal Revenue Code of 1954," 68A Stat. 50, 26 U.S.C. 166, as amended, and regulations adopted pursuant thereto, or that could be claimed as such a deduction if the vendor kept accounts on an accrual basis. "Bad debt" does not include any interest or sales tax on the purchase price, uncollectible amounts on property that remains in the possession of the vendor until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or for any portion of the debt recovered, and repossessed property.

(B) In computing taxable receipts for purposes of this chapter, a vendor may deduct the amount of bad debts. The amount deducted must be charged off as uncollectible on the books of the vendor. A deduction may be claimed only with respect to bad debts on which the taxes pursuant to *sections 5739.10 and 5739.12 of the Revised Code* were paid in a preceding tax period. If the vendor's business consists of taxable and nontaxable transactions, the deduction shall equal the full amount of the debt if the debt is documented as a taxable transaction in the vendor's records. If no such documentation is available, the maximum deduction on any bad debt shall equal the amount of the bad debt multiplied by the quotient obtained by dividing the sales taxed pursuant to this chapter during the preceding calendar year by all sales during the preceding calendar year, whether taxed or not. If a consumer or other person pays all or part of a bad debt with respect to which a vendor claimed a deduction under this section, the vendor shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit such taxes in the vendor's next payment to the tax commissioner.

(C) Any claim for a bad debt deduction under this section shall be supported by such evidence as the tax commissioner by rule requires. The commissioner shall review any change in the rate of taxation applicable to any taxable sales by a vendor claiming a deduction pursuant to this section and adopt rules for altering the deduction in the event of such a change in order to ensure that the deduction on any bad debt does not result in the vendor claiming the deduction recovering any more or less than the taxes imposed on the sale that constitutes the bad debt.

(D) In any reporting period in which the amount of bad debt exceeds the amount of taxable sales for the period, the vendor may file a refund claim for any tax collected on the bad debt in excess of the tax reported on the return. The refund claim shall be filed in the manner provided in *section 5739.07 of the Revised Code*, except that the claim may be filed within four years of the due date of the return on which the bad debt first could have been claimed.

(E) When the filing responsibilities of a vendor have been assumed by a certified service provider, the certified service provider shall claim the bad debt allowance provided by this section on behalf of the vendor. The certified service provider shall credit or refund to the vendor the full amount of any bad debt allowance or refund.

(F) No person other than the vendor in the transaction that generated the bad debt or, as provided in division (E) of this section, a certified service provider, may claim the bad debt allowance provided by this section.

**HISTORY:**

138 v S 16 (Eff 10-29-79); 149 v H 94. Eff 1-1-2002; 150 v H 95, § 1, eff. 6-26-03.

## FOCUS - 21 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.13 (2010)

§ 5739.13. Liability of vendor and consumer; assessment; petition for reassessment; penalties; appeal; judgment; execution

(A) If any vendor collects the tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, and fails to remit the tax to the state as prescribed, or on the sale of a motor vehicle, watercraft, or outboard motor required to be titled, fails to remit payment to a clerk of a court of common pleas as provided in *section 1548.06 or 4505.06 of the Revised Code*, the vendor shall be personally liable for any tax collected and not remitted. The tax commissioner may make an assessment against such vendor based upon any information in the commissioner's possession.

If any vendor fails to collect the tax or any consumer fails to pay the tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code*, on any transaction subject to the tax, the vendor or consumer shall be personally liable for the amount of the tax applicable to the transaction. The commissioner may make an assessment against either the vendor or consumer, as the facts may require, based upon any information in the commissioner's possession.

An assessment against a vendor when the tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* has not been collected or paid, shall not discharge the purchaser's or consumer's liability to reimburse the vendor for the tax applicable to such transaction.

An assessment issued against either, pursuant to this section, shall not be considered an election of remedies, nor a bar to an assessment against the other for the tax applicable to the same transaction, provided that no assessment shall be issued against any person for the tax due on a particular transaction if the tax on that transaction actually has been paid by another.

The commissioner may make an assessment against any vendor who fails to file a return or remit the proper amount of tax required by this chapter, or against any consumer who fails to pay the proper amount of tax required by this chapter. When information in the possession of the commissioner indicates that the amount required to be collected or paid under this chapter is greater than the amount remitted by the vendor or paid by the consumer, the commissioner may audit a sample of the vendor's sales or the consumer's purchases for a representative period, to ascertain the per cent of exempt or taxable transactions or the effective tax rate and may issue an assessment based on the audit. The commissioner shall make a good faith effort to reach agreement with the vendor or consumer in selecting a representative sample.

The commissioner may make an assessment, based on any information in his possession, against any person who fails to file a return or remit the proper amount of tax required by *section 5739.102 [5739.10.2] of the Revised Code*.

The commissioner may issue an assessment on any transaction for which any tax imposed under this chapter or Chapter 5741. of the Revised Code was due and unpaid on the date the vendor or **consumer** was informed by an agent of the tax commissioner of an investigation or audit. If the vendor or **consumer** remits any payment of the tax for the period covered by the assessment after the vendor or **consumer** was informed of the investigation or audit, the payment shall be credited against the amount of the assessment.

The commissioner shall give the party assessed written notice of the assessment in the manner provided in *section 5703.37 of the Revised Code*. With the notice, the commissioner shall provide instructions on how to petition for reassessment and request a hearing on the petition.

(B) Unless the party assessed files with the commissioner within sixty days after service of the notice of assessment, either personally or by certified mail, a written petition for reassessment, signed by the party assessed or that party's authorized agent having knowledge of the facts, the assessment becomes final and the amount of the assessment is due from the party assessed and payable to the treasurer of state and remitted to the tax commissioner. The petition shall indicate the objections of the party assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination. If the petition has been properly filed, the commissioner shall proceed under *section 5703.60 of the Revised Code*.

(C) After an assessment becomes final, if any portion of the assessment remains unpaid, including accrued interest, a certified copy of the commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the place of business of the party assessed is located or the county in which the party assessed resides. If the party assessed maintains no place of business in this state and is not a resident of this state, the certified copy of the entry may be filed in the office of the clerk of the court of common pleas of Franklin county.

Immediately upon the filing of the entry, the clerk shall enter a judgment for the state against the party assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled "special judgments for state, county, and transit authority retail sales tax" or, if appropriate, "special judgments for resort area excise tax," and shall have the same effect as other judgments. Execution shall issue upon the judgment upon the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment except as otherwise provided in this chapter.

The portion of the assessment not paid within sixty days after the date the assessment was issued shall bear interest at the rate per annum prescribed by *section 5703.47 of the Revised Code* from the day the tax commissioner issues the assessment until the assessment is paid. Interest shall be paid in the same manner as the tax and may be collected by issuing an assessment under this section.

(D) All money collected by the tax commissioner under this section shall be paid to the treasurer of state, and when paid shall be considered as revenue arising from the taxes imposed by or pursuant to *sections 5739.01 to 5739.31 of the Revised Code*.

#### **HISTORY:**

GC § 5546-9a; 115 v PtII, 306, § 9a; 116 v PtII, 69; 116 v 323; 117 v 761; 119 v 34; Bureau of Code Revision, 10-1-53; 126 v 723; 128 v 421 (Eff 7-1-59); 129 v 1164 (Eff 1-1-62); 132 v S 350 (Eff 9-1-67); 132 v H 919 (Eff 12-12-67); 135 v H 258 (Eff 7-22-74); 135 v S 544 (Eff 6-29-74); 136 v H 1 (Eff 6-13-75); 139 v S 530 (Eff 6-25-82); 140 v H 291 (Eff 7-1-83); 141 v H 583 (Eff 2-20-86); 142 v H 231 (Eff 10-5-87); 144 v H 791 (Eff 3-15-93); 144 v S 358 (Eff 1-15-93); 145 v H 327 (Eff 6-30-93); 145 v H 152 (Eff 7-1-93); 147 v H 215 (Eff 6-30-97); 148 v H 612 (Eff 9-29-2000); 149 v H 94 (Eff 1-1-2002); 149 v S 200. Eff 9-6-2002.

## FOCUS - 22 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.15 (2010)

§ 5739.15. Jeopardy assessment

(A) If the tax commissioner finds that a vendor, consumer, or officer, employee, or trustee of a corporation or business trust who is liable for any tax or charge levied by this chapter or Chapter 5741. of the Revised Code is about to depart from the state, remove the person's property from the state, conceal the person's self or property, or do any other act tending to prejudice, obstruct, or render wholly or partly ineffectual proceedings to collect the tax unless the proceedings are commenced without delay, or if the commissioner believes that the collection of the amount due from any vendor, consumer, or officer, employee, or trustee of a corporation or business trust will be jeopardized by delay, the commissioner may issue a jeopardy assessment against the person for the amount of the tax or charge plus a penalty as provided by *section 5739.133 [5739.13.3] of the Revised Code*. Upon issuance of a jeopardy assessment under this division, the total amount assessed shall immediately be due and payable unless security is provided pursuant to division (C) of this section. Any assessment issued under this section shall bear interest as prescribed by *section 5739.13 of the Revised Code*.

(B) The commissioner immediately shall file an entry with the clerk of the court of common pleas in the same manner and with the same effect as provided in *section 5739.13 of the Revised Code*. Notice of the jeopardy assessment shall be served on the person assessed or the person's legal representative, as provided in *section 5703.37 of the Revised Code*, within five days of the filing of the entry. The person assessed may petition for reassessment within sixty days of receipt of the notice of jeopardy assessment in the same manner as provided in *section 5739.13 of the Revised Code*. Full or partial payment of the assessment shall not prejudice the commissioner's consideration of the merits of the assessment as contested by the petition for reassessment. Upon notification of the existence of the judgment filed pursuant to this division, any public official having control or custody of any funds or property of the person assessed immediately shall pay or deliver the funds or property to the commissioner as full or partial satisfaction of the jeopardy assessment. However, funds or property needed as evidence in criminal proceedings or that is expected to be forfeited pursuant to Chapter 2981. of the Revised Code, need not be relinquished by the public official. Upon disposition of criminal and forfeiture proceedings, funds and property not needed as evidence and not forfeited shall be delivered to the commissioner.

(C) If the person subject to a jeopardy assessment files a petition for reassessment and posts security satisfactory to the commissioner in an amount sufficient to satisfy the unpaid balance of the assessment, execution on the judgment shall be stayed pending disposition of the petition for reassessment and all appeals resulting from the petition. If the security is sufficient to satisfy the full amount of the assessment, the commissioner shall return any funds or property of

the person previously seized. Upon satisfaction of the assessment, the commissioner shall order the security released and the judgment vacated.

**HISTORY:**

GC § 5546-9c; 116 v PtII, 323; 117 v 761; Bureau of Code Revision, 10-1-53; 142 v H 231 (Eff 10-5-87); 147 v H 215 (Eff 6-30-97); 148 v H 612. Eff 9-29-2000; 151 v H 241, § 1, eff. 7-1-07.

## FOCUS - 23 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.16 (2010)

§ 5739.16. Four-year limitation for assessments; exceptions

(A) Except as otherwise provided in this section, no assessment shall be made or issued against a vendor or consumer for any tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], or 5739.10 of the Revised Code* more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period is filed, whichever is later. A consumer who provides a fully completed exemption certificate pursuant to division (B) of *section 5739.03 of the Revised Code* may be assessed any tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* that results from denial of the claimed exemption within the later of a period otherwise allowed by this section or one year after the date the certificate was provided. This division does not bar an assessment:

- (1) When the tax commissioner has substantial evidence of amounts of taxes collected by a vendor from consumers on retail sales, which were not returned to the state;
- (2) When the vendor assessed failed to file a return as required by *section 5739.12 of the Revised Code*;
- (3) When the vendor or consumer and the commissioner waive in writing the time limitation.

(B) No assessment shall be made or issued against a vendor or consumer for any tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], 5739.026 [5739.02.6], or 5739.10 of the Revised Code* for any period during which there was in full force and effect a rule of the tax commissioner under or by virtue of which the collection or payment of any such tax was not required. This division does not bar an assessment when the tax commissioner has substantial evidence of amounts of taxes collected by a vendor from consumers on retail sales which were not returned to the state.

(C) No assessment shall be made or issued against a person for any tax imposed pursuant to *section 5739.101 [5739.10.1] of the Revised Code* more than four years after the return date for the period in which the tax is imposed on the person's gross receipts, or more than four years after the return for such period is filed, whichever is later. This division does not bar an assessment when the person assessed failed to file a return as required under *section 5739.102 [5739.10.2] of the Revised Code*, or when the person and the commissioner waive in writing the time limitation.

**HISTORY:**

GC § 5546-9d; 121 v 149, § 2; Bureau of Code Revision, 10-1-53; 125 v 899 (Eff 11-7-53); 129 v 1164 (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 135 v H 261 (Eff 6-13-74); 135 v S 544 (Eff 6-29-74); 141 v H 583 (Eff 2-20-86); 145 v H 327. Eff 6-30-93; 151 v H 66, § 101.01, eff. 1-1-06.

## FOCUS - 24 of 39 DOCUMENTS

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\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5739. SALES TAX  
 RESORT AREA TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5739.17 (2010)

§ 5739.17. Retail sales license; change of vendor's identity or location; transient and service and delivery vendors

(A) No person shall engage in making retail sales subject to a tax imposed by or pursuant to *section 5739.02, 5739.021 [5739.02.1], 5739.023 [5739.02.3], or 5739.026 [5739.02.6] of the Revised Code* as a business without having a license therefor, except as otherwise provided in divisions (A)(1), (2), and (3) of this section.

(1) In the dissolution of a partnership by death, the surviving partner may operate under the license of the partnership for a period of sixty days.

(2) The heirs or legal representatives of deceased persons, and receivers and trustees in bankruptcy, appointed by any competent authority, may operate under the license of the person so succeeded in possession.

(3) Two or more persons who are not partners may operate a single place of business under one license. In such case neither the retirement of any such person from business at that place of business, nor the entrance of any person, under an existing arrangement, shall affect the license or require the issuance of a new license, unless the person retiring from the business is the individual named on the vendor's license.

Except as otherwise provided in this section, each applicant for a license shall make out and deliver to the county auditor of each county in which the applicant desires to engage in business, upon a blank to be furnished by such auditor for that purpose, a statement showing the name of the applicant, each place of business in the county where the applicant will make retail sales, the nature of the business, and any other information the tax commissioner reasonably prescribes in the form of a statement prescribed by the commissioner.

At the time of making the application, the applicant shall pay into the county treasury a license fee in the sum of twenty-five dollars for each fixed place of business in the county that will be the situs of retail sales. Upon receipt of the application and exhibition of the county treasurer's receipt, showing the payment of the license fee, the county auditor shall issue to the applicant a license for each fixed place of business designated in the application, authorizing the applicant to engage in business at that location. If a vendor's identity changes, the vendor shall apply for a new license. If a vendor wishes to move an existing fixed place of business to a new location within the same county, the vendor shall obtain a new vendor's license or submit a request to the tax commissioner to transfer the existing vendor's license to the new location. When the new location has been verified as being within the same county, the commissioner shall authorize the transfer and notify the county auditor of the change of location. If a vendor wishes to move an existing fixed place of business to another county, the vendor's license shall not transfer and the vendor shall obtain a new vendor's license from the county in which the business is to be located. The form of the license shall be prescribed by the commissioner. The fees collected shall be credited to the general fund of the county.

The tax commissioner may establish or participate in a registration system whereby any vendor may obtain a vendor's license by submitting to the commissioner a vendor's license application and a license fee of twenty-five dollars for each fixed place of business at which the vendor intends to make retail sales. Under this registration system, the commissioner shall issue a vendor's license to the applicant on behalf of the county auditor of the county in which the applicant desires to engage in business, and shall forward a copy of the application and license fee to that county. All such license fees received by the commissioner for the issuance of vendor's licenses shall be deposited into the vendor's license application fund, which is hereby created in the state treasury. The commissioner shall certify to the director of budget and management within ten business days after the close of a month the license fees to be transmitted to each county from the vendor's license application fund for vendor's license applications received by the commissioner during that month. License fees transmitted to a county for which payment was not received by the commissioner may be netted against a future distribution to that county, including distributions made pursuant to *section 5739.21 of the Revised Code*.

A vendor that makes retail sales subject to tax under Chapter 5739. of the Revised Code pursuant to a permit issued by the division of liquor control shall obtain a vendor's license in the identical name and for the identical address as shown on the permit.

Except as otherwise provided in this section, if a vendor has no fixed place of business and sells from a vehicle, each vehicle intended to be used within a county constitutes a place of business for the purpose of this section.

(B) As used in this division, "transient vendor" means any person who makes sales of tangible personal property from vending machines located on land owned by others, who leases titled motor vehicles, titled watercraft, or titled outboard motors, who effectuates leases that are taxed according to division (A)(2) of *section 5739.02 of the Revised Code*, or who, in the usual course of the person's business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business or temporary exhibition, show, fair, flea market, or similar event in a county in which the person has no fixed place of business, for the purpose of making retail sales of such property. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of making retail sales of goods to the public. A place of business is not temporary if the same person conducted business at the place continuously for more than six months or occupied the premises as the person's permanent residence for more than six months, or if the person intends it to be a fixed place of business.

Any transient vendor, in lieu of obtaining a vendor's license under division (A) of this section for counties in which the transient vendor has no fixed place of business, may apply to the tax commissioner, on a form prescribed by the commissioner, for a transient vendor's license. The transient vendor's license authorizes the transient vendor to make retail sales in any county in which the transient vendor does not maintain a fixed place of business. Any holder of a transient vendor's license shall not be required to obtain a separate vendor's license from the county auditor in that county. Upon the commissioner's determination that an applicant is a transient vendor, the applicant shall pay a license fee in the amount of twenty-five dollars, at which time the tax commissioner shall issue the license. The tax commissioner may require a vendor to be licensed as a transient vendor if, in the opinion of the commissioner, such licensing is necessary for the efficient administration of the tax.

Any holder of a valid transient vendor's license may make retail sales at a temporary place of business or temporary exhibition, show, fair, flea market, or similar event, held anywhere in the state without complying with any provision of *section 311.37 of the Revised Code*. Any holder of a valid vendor's license may make retail sales as a transient vendor at a temporary place of business or temporary exhibition, show, fair, flea market, or similar event held in any county in which the vendor maintains a fixed place of business for which the vendor holds a vendor's license without obtaining a transient vendor's license.

(C) As used in this division, "service vendor" means any person who, in the usual course of the person's business, sells services described in division (B)(3)(e), (f), (g), (h), (i), (j), (k), (l), (m), (p), or (t) of *section 5739.01 of the Revised Code*.

Every service vendor shall make application to the tax commissioner for a service vendor's license. Each applicant shall pay a license fee in the amount of twenty-five dollars. Upon the commissioner's determination that an applicant is a service vendor and payment of the fee, the commissioner shall issue the applicant a service vendor's license.

Only sales described in division (B)(3)(e), (f), (g), (h), (i), (j), (k), (l), (m), (p), or (t) of *section 5739.01 of the Revised Code* may be made under authority of a service vendor's license, and that license authorizes sales to be made at

any place in this state. Any service vendor who makes sales of other services or tangible personal property subject to the sales tax also shall be licensed under division (A), (B), or (D) of this section.

(D) As used in this division, "delivery vendor" means any vendor who engages in one or more of the activities described in divisions (D)(1) to (4) of this section, and who maintains no store, showroom, or similar fixed place of business or other location where merchandise regularly is offered for sale or displayed or shown in catalogs for selection or pick-up by consumers, or where consumers bring goods for repair or other service.

(1) The vendor makes retail sales of tangible personal property;

(2) The vendor rents or leases, at retail, tangible personal property, except titled motor vehicles, titled watercraft, or titled outboard motors;

(3) The vendor provides a service, at retail, described in division (B)(3)(a), (b), (c), or (d) of *section 5739.01 of the Revised Code*; or

(4) The vendor makes retail sales of warranty, maintenance or service contracts, or similar agreements as described in division (B)(7) of *section 5739.01 of the Revised Code*.

A transient vendor or a seller registered pursuant to *section 5741.17 of the Revised Code* is not a delivery vendor.

Delivery vendors shall apply to the tax commissioner, on a form prescribed by the commissioner, for a delivery vendor's license. Each applicant shall pay a license fee of twenty-five dollars for each delivery vendor's license, to be credited to the general revenue fund. Upon the commissioner's determination that the applicant is a delivery vendor, the commissioner shall issue the license. A delivery vendor's license authorizes retail sales to be made throughout the state. All sales of the vendor must be reported under the delivery license. The commissioner may require a vendor to be licensed as a delivery vendor if, in the opinion of the commissioner, such licensing is necessary for the efficient administration of the tax. The commissioner shall not issue a delivery vendor license to a vendor who holds a license issued under division (A) of this section.

(E) Any transient vendor who is issued a license pursuant to this section shall display the license or a copy of it prominently, in plain view, at every place of business of the transient vendor. Every owner, organizer, or promoter who operates a fair, flea market, show, exhibition, convention, or similar event at which transient vendors are present shall keep a comprehensive record of all such vendors, listing the vendor's name, permanent address, vendor's license number, and the type of goods sold. Such records shall be kept for four years and shall be open to inspection by the tax commissioner.

#### **HISTORY:**

GC § 5546-10; 115 v PtII, 306(313), § 10; 116 v 53; 116 v PtII, 69; 116 v PtII, 323; Bureau of Code Revision, 10-1-53; 128 v 421(434) (Eff 7-1-59); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 139 v H 694 (Eff 11-15-81); 139 v H 552 (Eff 11-24-81); 139 v S 530 (Eff 6-25-82); 140 v H 291 (Eff 7-1-83); 141 v H 583 (Eff 2-20-86); 141 v S 247 (Eff 7-9-86); 142 v H 171 (Eff 7-1-87); 144 v H 791 (Eff 3-15-93); 147 v H 215 (Eff 9-29-97); 148 v H 612 (Eff 9-29-2000); 149 v S 200. Eff 9-6-2002; 150 v H 95, § 1, eff. 6-26-03; 150 v S 218, § 1, eff. 4-29-05; 151 v H 66, § 101.01, eff. 6-30-05, 7-1-05.

FOCUS - 25 of 39 DOCUMENTS

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\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
CHAPTER 5739. SALES TAX  
RESORT AREA TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5739.26 (2010)*

§ 5739.26. Tax paid by consumer; prohibition against false certificates

No consumer shall refuse to pay the full and exact tax as required by sections 5739.01 to 5739.31, inclusive, of the Revised Code, or refuse to comply with such sections and the rules and regulations of the tax commissioner, or present to the vendor a false certificate indicating that the sale is not subject to the tax.

**HISTORY:**

GC § 5546-15a; 116 v PtII, 69(78); Bureau of Code Revision. Eff 10-1-53.

FOCUS - 26 of 39 DOCUMENTS

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\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
CHAPTER 5739. SALES TAX  
RESORT AREA TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5739.29 (2010)*

§ 5739.29. Vendor to collect tax; prohibition against rebate

No vendor shall fail to collect the full and exact tax as required by sections 5739.01 to 5739.31, inclusive, of the Revised Code, or fail to comply with such sections and the rules and regulations of the tax commissioner or, except as expressly authorized by such sections, refund, remit, or rebate, to a consumer, either directly or indirectly and, by whatsoever means, any of the tax levied by sections 5739.01 to 5739.31, inclusive, of the Revised Code, or make in any form of advertising, verbal or otherwise, any statements which might imply that he is absorbing the tax, or paying the tax for the consumer by an adjustment of prices, or selling at a price including the tax, or rebating the tax in any other manner.

**HISTORY:**

GC § 5546-15; 115 v PtII, 306(314), § 15; Bureau of Code Revision, 10-1-53; 128 v 421(435). Eff 7-1-59.

## FOCUS - 27 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5741.01 (2010)*

§ 5741.01. Definitions

As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, business trusts, governments, and combinations of individuals of any form.

(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state.

(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state.

(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; and whether the consideration was money, credit, barter, or exchange. Purchase includes production, even though the article produced was used, stored, or consumed by the producer. The transfer of copyrighted motion picture films for exhibition purposes is not a purchase, except such films as are used solely for advertising purposes.

(E) "Seller" means the person from whom a purchase is made, and includes every person engaged in this state or elsewhere in the business of selling tangible personal property or providing a service for storage, use, or other consumption or benefit in this state; and when, in the opinion of the tax commissioner, it is necessary for the efficient administration of this chapter, to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates, or from whom the person obtains tangible personal property, sold by the person for storage, use, or other consumption in this state, irrespective of whether or not the person is making such sales on the person's own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the commissioner may regard the person as such agent, and may regard such dealer, distributor, supervisor, or employer as the seller. "Seller" does not include any person to the extent the person provides a communications medium, such as, but not limited to, newspapers, magazines, radio, television, or cable television, by means of which sellers solicit purchases of their goods or services.

(F) "Consumer" means any person who has purchased tangible personal property or has been provided a service for storage, use, or other consumption or benefit in this state. "Consumer" does not include a person who receives, without charge, tangible personal property or a service.

A person who performs a facility management or similar service contract for a contractee is a **consumer** of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E) of *section 5739.01 of the Revised Code*.

(G) (1) "Price," except as provided in

divisions (G)(2) to (6) of this section, has the same meaning as in division (H)(1) of *section 5739.01 of the Revised Code*.

(2) In the case of watercraft, outboard motors, or new motor vehicles, "price" has the same meaning as in divisions (H)(2) and (3) of *section 5739.01 of the Revised Code*.

(3) In the case of a nonresident business **consumer** that purchases and uses tangible personal property outside this state and subsequently temporarily stores, uses, or otherwise consumes such tangible personal property in the conduct of business in this state, the **consumer** or the tax commissioner may determine the price based on the value of the temporary storage, use, or other consumption, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the **consumer** is subject to review and redetermination by the commissioner.

(4) In the case of tangible personal property held in this state as inventory for sale or lease, and that is temporarily stored, used, or otherwise consumed in a taxable manner, the price is the value of the temporary use. A price determination made by the **consumer** is subject to review and redetermination by the commissioner.

(5) In the case of tangible personal property originally purchased and used by the **consumer** outside this state, and that becomes permanently stored, used, or otherwise consumed in this state more than six months after its acquisition by the **consumer**, the **consumer** or the commissioner may determine the price based on the current value of such tangible personal property, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the **consumer** is subject to review and redetermination by the commissioner.

(6) If a **consumer** produces tangible personal property for sale and removes that property from inventory for the **consumer's** own use, the price is the produced cost of that tangible personal property.

(H) "Nexus with this state" means that the seller engages in continuous and widespread solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state.

(I) "Substantial nexus with this state" means that the seller has sufficient contact with this state, in accordance with Section 8 of Article I of the Constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to **consumers** in this state. "Substantial nexus with this state" exists when the seller does any of the following:

(1) Maintains a place of business within this state, whether operated by employees or agents of the seller, by a member of an affiliated group, as defined in division (B)(3)(e) of *section 5739.01 of the Revised Code*, of which the seller is a member, or by a franchisee using a trade name of the seller;

(2) Regularly has employees, agents, representatives, solicitors, installers, repairmen, salesmen, or other individuals in this state for the purpose of conducting the business of the seller;

(3) Uses a person in this state for the purpose of receiving or processing orders of the seller's goods or services;

(4) Makes regular deliveries of tangible personal property into this state by means other than common carrier;

(5) Has membership in an affiliated group, as described in division (B)(3)(e) of *section 5739.01 of the Revised Code*, at least one other member of which has substantial nexus with this state;

(6) Owns tangible personal property that is rented or leased to a **consumer** in this state, or offers tangible personal property, on approval, to **consumers** in this state;

(7) Except as provided in *section 5703.65 of the Revised Code*, is registered with the secretary of state to do business in this state or is registered or licensed by any state agency, board, or commission to transact business in this state or to make sales to persons in this state;

(8) Has any other contact with this state that would allow this state to require the seller to collect and remit use tax under Section 8 of Article I of the Constitution of the United States.

(J) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to *section 306.03 of the Revised Code* or, if the board of county commissioners operates the county transit system, the county auditor.

(K) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(L) "Transit authority" means a regional transit authority created pursuant to *section 306.31 of the Revised Code* or a county in which a county transit system is created pursuant to *section 306.01 of the Revised Code*. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(M) "Providing a service" has the same meaning as in division (X) of *section 5739.01 of the Revised Code*.

(N) "Other consumption" includes receiving the benefits of a service.

(O) "Lease" or "rental" has the same meaning as in division (UU) of *section 5739.01 of the Revised Code*.

(P) "Certified service provider" has the same meaning as in *section 5740.01 of the Revised Code*.

#### **HISTORY:**

GC § 5546-25; 116 v PtlI, 101; 116 v PtlI, 346; 117 v 751; 119 v 389, § 2; 121 v 247; 122 v 725; Bureau of Code Revision, 10-1-53; 127 v 133; 128 v 421(436) (Eff 7-1-59); 129 v 1164(1175) (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 136 v H 1 (Eff 6-13-75); 139 v H 275 (Eff 8-1-81); 139 v H 694 (Eff 11-15-81); 139 v H 694, § 205 (Eff 8-1-82); 139 v H 671 (Eff 12-9-81); 139 v H 671, § 3 (Eff 8-1-82); 141 v H 583 (Eff 2-20-86); 142 v H 231 (Eff 10-5-87); 143 v H 365 (Eff 4-1-90); 143 v S 303 (Eff 7-18-90); 144 v H 298 (Eff 8-1-91); 145 v H 152 (Eff 7-1-93); 146 v H 61 (Eff 10-25-95); 149 v H 405 (Eff 12-13-2001); 149 v S 143 (Eff 6-21-2002); 149 v H 524 (Eff 6-28-2002); 149 v S 200. Eff 9-6-2002; 150 v H 95, § 1, eff. 6-26-03.

## FOCUS - 28 of 39 DOCUMENTS

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 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.02 (2010)

§ 5741.02. Levy of tax; rate; exemptions

(A) (1) For the use of the general revenue fund of the state, an excise tax is hereby levied on the storage, use, or other consumption in this state of tangible personal property or the benefit realized in this state of any service provided. The tax shall be collected as provided in *section 5739.025 [5739.02.5] of the Revised Code*, provided that on and after July 1, 2003, and on or before June 30, 2005, the rate of the tax shall be six per cent. On and after July 1, 2005, the rate of the tax shall be five and one-half per cent.

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

(3) Except as provided in division (A)(2) of this section, in the case of a transaction, the price of which consists in whole or part of the lease or rental of tangible personal property, the tax shall be measured by the installments of those leases or rentals.

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

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

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

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

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and *section 5739.02 of the Revised Code*;

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

(5) Tangible personal property or services rendered, upon which taxes have been paid to another jurisdiction to the extent of the amount of the tax paid to such other jurisdiction. Where the amount of the tax imposed by this section and imposed pursuant to *section 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* exceeds the amount paid to another jurisdiction, the difference shall be allocated between the tax imposed by this section and any tax imposed by a county or a transit authority pursuant to *section 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*, in proportion to the respective rates of such taxes.

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

(6) The transfer of a used manufactured home or used mobile home, as defined by *section 5739.0210 [5739.02.10] of the Revised Code*, made on or after January 1, 2000;

(7) Drugs that are or are intended to be distributed free of charge to a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of a professional practice and that by law may be dispensed only by or upon the order of such a practitioner.

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

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

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

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

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

(D) The tax applies to the storage, use, or other consumption in this state of tangible personal property or services, the acquisition of which at the time of sale was excepted under division (E) of *section 5739.01 of the Revised Code* from the tax imposed by *section 5739.02 of the Revised Code*, but which has subsequently been temporarily or permanently stored, used, or otherwise consumed in a taxable manner.

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

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

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

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

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

(iv) A seller that accepts an exemption certificate from a **consumer** who claims a multiple points of use exemption under division (D) of *section 5739.033 [5739.03.3] of the Revised Code*, if the item purchased is tangible personal property, other than prewritten computer software.

(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.

(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.

(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.

(F) A seller who files a petition for reassessment contesting the assessment of tax on transactions for which the seller obtained no valid exemption certificates, and for which the seller failed to establish that the transactions were not subject to the tax during the one-hundred-twenty-day period allowed under division (E) of this section, may present to the tax commissioner additional evidence to prove that the transactions were exempt. The seller shall file such evidence within ninety days of the receipt by the seller of the notice of assessment, except that, upon application and for reasonable cause, the tax commissioner may extend the period for submitting such evidence thirty days.

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

(H) The tax collected by the seller from the **consumer** under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional use tax pursuant to *section 5741.021 [5741.02.1] or 5741.023 [5741.02.3] of the Revised Code* and of transit authorities levying an additional use tax pursuant to *section 5741.022 [5741.02.2] of the Revised Code*. Except for the discount authorized under *section 5741.12 of the Revised Code* and the effects of any rounding pursuant to *section 5703.055 [5703.05.5] of the Revised Code*, no person other than the state or such a county or transit authority shall derive any benefit from the collection of such tax.

#### HISTORY:

GC § 5546-26; 116 v PtII, 101, § 2; 116 v PtII, 346; 118 v 46; 122 v 909; Bureau of Code Revision, 10-1-53; 128 v 421(437) (Eff 7-1-59); 129 v 1164(1177) (Eff 1-1-62); 132 v S 350 (Eff 9-1-67); 134 v H 439 (Eff 12-10-71); 135 v S 544 (Eff 6-29-74); 139 v H 694 (Eff 11-15-81); 141 v H 583 (Eff 2-20-86); 144 v H 298 (Eff 8-1-91); 147 v S 142 (Eff 3-30-99); 148 v H 163 (Eff 3-31-99); 148 v H 612, § 1 (Eff 9-29-2000); 148 v H 283 (Eff 7-1-2001); 148 v H 612, § 3 (Eff 7-1-2001); 149 v S 143. Eff 7-1-2003; 150 v S 47, § 1, eff. 6-12-03; 150 v S 47, § 3, eff. 7-1-03; 150 v H 95, § 1, eff. 6-26-03; 150 v S 37, § 1, eff. 10-21-03; 151 v H 66, § 101.01, eff. 6-30-05, 1-1-06; 151 v S 269, § 1, eff. 9-21-06; 151 v S 269, § 1, eff. 9-21-06; 151 v H 294, § 1, eff. 9-28-06; 152 v H 119, § 101.01, eff. 6-30-07.

## FOCUS - 29 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.04 (2010)

§ 5741.04. Collection, remission, and reporting of tax by seller or seller's agent

Every seller required to register with the tax commissioner pursuant to *section 5741.17 of the Revised Code* who is engaged in the business of selling tangible personal property in this state for storage, use, or other consumption in this state, to which *section 5741.02 of the Revised Code* applies, or which is subject to a tax levied pursuant to *section 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*, shall, and any other seller who is authorized by rule of the tax commissioner to do so may, collect from the **consumer** the full and exact amount of the tax payable on each such storage, use, or consumption, in the manner and at the times provided as follows:

(A) If the price is, at or prior to the delivery of possession of the thing sold to the **consumer**, paid in currency passed from hand to hand by the **consumer or the consumer's** agent, to the seller or the seller's agent, the seller or the seller's agent shall collect the tax with and at the same time as the price.

(B) If the price is otherwise paid or to be paid, the seller or the seller's agent shall, at or prior to the delivery of possession of the thing sold to the **consumer**, charge the tax imposed by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* to the account of the **consumer**, which amount shall be collected by the seller from the **consumer** in addition to the price. Such transaction shall be reported on the return for the period in which the transaction occurred, and the amount of tax applicable to the transaction shall be remitted with the return or, if the **consumer** is subject to *section 5741.121 [5741.12.1] of the Revised Code*, in the manner prescribed by that section. The amount of the tax shall become a legal charge in favor of the seller and against the **consumer**.

(C) It shall be the obligation of each **consumer**, as required by *section 5741.12 of the Revised Code*, to report and pay the taxes levied by *sections 5741.021 [5741.02.1], 5741.022 [5741.02.2], and 5741.023 [5741.02.3] of the Revised Code*, if applicable, on any storage, use, or other consumption of tangible personal property purchased in this state from a vendor required to be licensed pursuant to *section 5739.17 of the Revised Code*.

**HISTORY:**

GC § 5546-28; 116 v PtlI, 101, § 4; 116 v PtlI, 346; Bureau of Code Revision, 10-1-53; 128 v 421(438) (Eff 7-1-59); 129 v 1164(1179) (Eff 1-1-62); 131 v 1386 (Eff 11-9-65); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 137 v H 1360 (Eff 12-11-78); 141 v H 583 (Eff 2-20-86); 144 v H 740. Eff 3-19-93; 152 v H 562, § 101.01, eff. 9-23-08.

## FOCUS - 30 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.05 (2010)

§ 5741.05. Seller to determine jurisdiction for which to collect tax

(A) A seller that collects the tax levied by *sections 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] 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 [5739.03.3] or 5739.034 [5739.03.4] 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 [5741.02.1]*, division (A)(1) of *section 5741.022 [5741.02.2]*, and division (A)(1) of *section 5741.023 [5741.02.3] of the Revised Code* for the consumer's county of residence as provided in *section 1548.06* and division (B) of *section 4505.06 of the Revised Code*.

(B) A vendor or seller is not responsible for collecting or remitting additional tax if a consumer subsequently stores, uses, or consumes the tangible personal property or service in another jurisdiction with a rate of tax imposed by *sections 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* that is higher than the amount collected by the vendor or seller pursuant to Chapter 5739. or 5741. of the Revised Code.

**HISTORY:**

149 v S 143. Eff 1-1-2005; 150 v H 168, § 4, eff. 1-1-05; 150 v H 204, § 6, eff. 1-1-05\*; 150 v S 218, § 1, eff. 1-28-05; 152 v H 119, § 101.01, eff. 6-30-07; 152 v H 429, § 1, eff. 1-1-10.

## FOCUS - 31 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.06 (2010)

§ 5741.06. Powers and duties of tax commissioner

The tax commissioner shall enforce and administer *sections 5741.01 to 5741.22 of the Revised Code*, which are hereby declared to be laws which he is required to administer within the meaning of *sections 5703.17 to 5703.39 and 5703.45 of the Revised Code*. The commissioner may adopt and promulgate such rules as he deems necessary to administer *sections 5741.01 to 5741.22 of the Revised Code*, and may authorize a seller to prepay the tax levied by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* upon storage, use, or consumption of things produced or distributed by such seller, and he may waive the collection of the tax from the **consumer**; but no such authority shall be granted or exercised, except upon application to the commissioner and unless he finds, that the conditions of the applicant's business are such as to render impracticable the collection of the tax by the seller in the manner otherwise provided by such sections; nor shall the authority so granted be exercised, nor the seller actually selling such products be exempted from *sections 5741.01 to 5741.22 of the Revised Code*, by virtue of such an authorization, unless the person to whom such authority is granted prints plainly upon the product sold, or offered for sale, a statement to the effect that the tax has been paid in advance, or otherwise conveys said information to the **consumer** by written notice. The commissioner may require security to his satisfaction to be filed with him, in such amount as he determines to be sufficient to secure the prepayment under the provisions of this section of the taxes levied by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* in the manner desired.

**HISTORY:**

GC § 5546-31; 116 v PtlI, 101, § 7; 116 v PtlI, 346; Bureau of Code Revision, 10-1-53; 129 v 1164(1178) (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 139 v H 694, § 207 (Eff 8-1-82); 141 v H 583. Eff 2-20-86.



## FOCUS - 33 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.12 (2010)

§ 5741.12. Return required by seller or user; payment of tax

(A) Each seller required by *section 5741.17 of the Revised Code* to register with the tax commissioner, and any seller authorized by the commissioner to collect the tax imposed by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* is subject to the same requirements and entitled to the same deductions and discount for prompt payments as are vendors under *section 5739.12 of the Revised Code*, and the same monetary allowances as are vendors under *section 5739.06 of the Revised Code*. The powers and duties of the commissioner with respect to returns and tax remittances under this section shall be identical with those prescribed in *section 5739.12 of the Revised Code*.

(B) Every person storing, using, or consuming tangible personal property or receiving the benefit of a service, the storage, use, consumption, or receipt of which is subject to the tax imposed by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*, when such tax was not paid to a seller, shall, on or before the twenty-third day of each month, file with the tax commissioner a return for the preceding month in such form as is prescribed by the commissioner, showing such information as the commissioner deems necessary, and shall pay the tax shown on the return to be due. Remittance shall be made payable to the treasurer of state. The commissioner may require **consumers** to file returns and pay the tax at other than monthly intervals, if the commissioner determines that such filing is necessary for the efficient administration of the tax. If the commissioner determines that a **consumer's** tax liability is not such as to merit monthly filing, the commissioner may authorize the **consumer** to file returns and pay tax at less frequent intervals.

Any **consumer** required to file a return and pay the tax under this section whose payment for any year equals or exceeds the amount shown in division (A) of *section 5741.121 [5741.12.1] of the Revised Code* is subject to the accelerated tax payment requirements in divisions (B) and (C) of that section.

(C) Every person storing, using, or consuming a motor vehicle, watercraft, or outboard motor, the ownership of which must be evidenced by certificate of title, shall file the return required by this section and pay the tax due at or prior to the time of filing an application for certificate of title.

**HISTORY:**

152 v H 562, § 101.01, eff. 1-1-09.

## FOCUS - 34 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.121 (2010)

§ 5741.121. Accelerated tax payments by certain sellers and consumers

(A) If the total amount of tax required to be paid by a seller or consumer under *section 5741.12 of the Revised Code* for any year equals or exceeds seventy-five thousand dollars, the seller or consumer shall remit each monthly tax payment in the second ensuing and each succeeding year on an accelerated basis as prescribed by division (B) of this section.

If a seller's or consumer's tax payment for each of two consecutive years is less than seventy-five thousand dollars, the seller or consumer is relieved of the requirement to remit taxes on an accelerated basis for the year that next follows the second of the consecutive years in which the tax payment is less than that amount, and is relieved of that requirement for each succeeding year, unless the tax payment in a subsequent year equals or exceeds seventy-five thousand dollars.

The tax commissioner shall notify each seller or consumer required to make accelerated tax payments of the seller's or consumer's obligation to do so and shall maintain an updated list of those sellers and consumers. Failure by the tax commissioner to notify a seller or consumer subject to this section to remit taxes on an accelerated basis does not relieve the seller or consumer of the obligation to remit taxes as provided under division (B) of this section.

(B) Sellers and consumers required by division (A) of this section to make accelerated tax payments shall electronically remit such payments to the tax commissioner, in a manner approved by the commissioner, as follows:

(1) On or before the twenty-third day of each month, a seller or consumer shall remit an amount equal to seventy-five per cent of the anticipated tax liability for that month.

(2) On or before the twenty-third day of each month, a seller shall report the taxes collected and a consumer shall report the taxes due for the previous month and shall remit that amount, less any amounts paid for that month as required by division (B)(1) of this section.

The payment of taxes on an accelerated basis under this section does not affect a seller's or consumer's obligation to file returns and pay the tax shown on the returns to be due as required under *section 5741.12 of the Revised Code*.

(C) A seller or consumer required by this section to remit taxes on an accelerated basis may apply to the tax commissioner in the manner prescribed by the commissioner to be excused from that requirement. The commissioner may excuse the seller or consumer from remittance on an accelerated basis for good cause shown for the period of time requested by the seller or consumer or for a portion of that period.

(D) (1) (a) If a seller or consumer that is required to remit payments under division (B) of this section fails to make a payment required under division (B)(1) of this section, or makes a payment under division (B)(1) of this section that is less than seventy-five per cent of the actual liability for that month, the commissioner may impose an additional charge not to exceed five per cent of that unpaid amount.

(b) Division (D)(1)(a) of this section does not apply if the seller's or consumer's payment under division (B)(1) of this section is equal to or greater than seventy-five per cent of the seller's or consumer's reported liability for the same month in the immediately preceding calendar year.

(2) Any additional charge imposed under division (D)(1) of this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. An additional charge may be collected by assessment in the manner prescribed by *section 5741.13 of the Revised Code*. The tax commissioner may waive all or a portion of such a charge and may adopt rules governing such waiver.

**HISTORY:**

152 v H 562, § 101.01, eff. 1-1-09.

FOCUS - 35 of 39 DOCUMENTS

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WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5741.13 (2010)*

§ 5741.13. Assessment for failure to make return or pay tax

If any person required by *section 5741.12 of the Revised Code* to make a return to the tax commissioner fails to make such return at the time required by or under authority of such section, the commissioner may make an assessment against such person, based upon any information within the commissioner's possession. The commissioner shall give to such person written notice of the assessment as provided in *section 5703.37 of the Revised Code*.

If information in the possession of the commissioner indicates that the tax paid by any consumer is less than that due, the commissioner may audit a representative sample of that consumer's purchases and may issue an assessment based thereon. The commissioner shall make a good faith effort to reach agreement with the consumer on selecting a representative sample.

If information in the possession of the commissioner indicates that the amount required to be collected or paid under this chapter is greater than the amount remitted by the seller, the commissioner may audit a representative sample of the seller's sales to determine the per cent of exempt or taxable transactions or the effective tax rate and may issue an assessment based on the audit. The commissioner shall make a good faith effort to reach agreement with the seller in selecting a representative sample.

**HISTORY:**

GC § 5546-36; 116 v PtII, 101, § 12; Bureau of Code Revision, 10-1-53; 140 v H 291 (Eff 7-1-83); 140 v H 794 (Eff 7-6-84); 149 v S 200. Eff 9-6-2002.

## FOCUS - 36 of 39 DOCUMENTS

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 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*

\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5741.16 (2010)*

§ 5741.16. Four-year limitation for assessment; exceptions

(A) Except as provided in division (B) or (C) of this section, no assessment shall be made or issued against a seller or consumer for any tax imposed by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period was filed, whichever date is later.

(B) A consumer who provides a fully completed exemption certificate pursuant to division (B) of section 5739.03 or division (E) of *section 5741.02 of the Revised Code* may be assessed any tax imposed by or pursuant to *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code* that results from denial of the claimed exemption within the later of a period allowed by division (A) of this section or one year after the date the certificate was provided.

(C) This section does not bar an assessment:

(1) When the tax commissioner has substantial evidence of amounts of taxes collected by a seller from consumers on purchases, which were not returned to the state by direct remittance;

(2) When the person assessed failed to file a return as required by *section 5741.12 of the Revised Code*;

(3) When the seller or consumer and the commissioner waive in writing the time limitation.

**HISTORY:**

GC § 5546-38; 121 v 149, § 2; Bureau of Code Revision, 10-1-53; 129 v 1164(1180) (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 135 v H 261 (Eff 6-13-74); 135 v S 544 (Eff 6-29-74); 141 v H 583. Eff 2-20-86; 151 v H 66, § 101.01, eff. 1-1-06.

## FOCUS - 37 of 39 DOCUMENTS

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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO GENERAL ASSEMBLY AND FILED  
 WITH THE SECRETARY OF STATE THROUGH FILE 54 \*\*\*  
 \*\*\* ANNOTATIONS CURRENT THROUGH APRIL 1, 2010 \*\*\*  
 \*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2010 \*\*\*

TITLE 57. TAXATION  
 CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.17 (2010)

§ 5741.17. Registration of sellers with tax commissioner

(A) (1) Except as otherwise provided in divisions (A)(2), (3), and (4) of this section, every seller of tangible personal property or services who has substantial nexus with this state shall register with the tax commissioner and supply any information concerning his contacts with this state that may be required by the commissioner.

(2) A seller who is licensed as a vendor pursuant to *section 5739.17 of the Revised Code* shall not be required to register with the commissioner pursuant to this section if all sales to consumers in this state are made under the authority of his vendor's license.

(3) A seller is not required to register under this section if the seller has no contact with this state other than an agency relationship with a person engaged in the business of telemarketing in this state and engaged by the seller exclusively for the purpose of solicitation of customers in other states.

(4) A seller is not required to register under this section if the seller has no contact with this state other than the ownership of property that is located at the facility of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the final printed product is produced.

(B) A seller who does not have substantial nexus with this state may voluntarily register with the commissioner. A seller who voluntarily registers with the commissioner under this section is entitled to the same benefits and is subject to the same duties and requirements as a seller required to be registered with the commissioner under this chapter.

The commissioner shall maintain an alphabetical index of all sellers registered under this chapter and records of the use tax reported and paid. Upon request, this information shall be made available to the treasurer of state.

**HISTORY:**

GC § 5546-27; 116 v PtII, 101, § 3; Bureau of Code Revision, 10-1-53; 128 v 421(439) (Eff 7-1-59); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 141 v H 583 (Eff 2-20-86); 142 v H 231 (Eff 10-5-87); 145 v H 152 (Eff 7-1-93); 145 v H 715. Eff 7-22-94.

FOCUS - 38 of 39 DOCUMENTS

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TITLE 57. TAXATION  
CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

*ORC Ann. 5741.19 (2010)*

§ 5741.19. Prohibition against refusal to pay tax

No **consumer** shall refuse to pay the full and exact tax required by *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*, or refuse to comply with *sections 5741.01 to 5741.22 of the Revised Code*, and the rules of the tax commissioner, or present to the seller a false certificate indicating that the storage, use, or consumption of the thing transferred is not subject to the tax.

**HISTORY:**

GC § 5546-44; 116 v PtII, 101, § 20; Bureau of Code Revision, 10-1-53; 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 141 v H 583. Eff 2-20-86.

FOCUS - 39 of 39 DOCUMENTS

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TITLE 57. TAXATION  
CHAPTER 5741. USE TAX; STORAGE TAX

Go to the Ohio Code Archive Directory

ORC Ann. 5741.21 (2010)

§ 5741.21. Seller to collect tax; rebates prohibited

No seller shall fail to collect the full and exact tax as required by *section 5741.02, 5741.021 [5741.02.1], 5741.022 [5741.02.2], or 5741.023 [5741.02.3] of the Revised Code*, or fail to comply with *sections 5741.01 to 5741.22 of the Revised Code*, and the rules of the tax commissioner or except as expressly authorized by such sections, refund, remit, or rebate to a consumer, directly or indirectly by whatsoever means, any of the tax, or make in any form of advertising, verbal or otherwise, any statements which might imply that he is absorbing the tax, or paying the tax for the consumer by an adjustment of prices, or selling at a price including the tax, or rebating the tax in any other manner.

**HISTORY:**

GC § 5546-42; 116 v P.H., 101, § 18; Bureau of Code Revision, 10-1-53; 129 v 1164(1181) (Eff 1-1-62); 132 v H 919 (Eff 12-12-67); 135 v S 544 (Eff 6-29-74); 141 v H 583. Eff 2-20-86.



Nonappropriation provisions of  
H.B. 904\*  
(As Introduced)

Rep. Sweeney

Restricts the exemption under the sales and use tax law for items to be used or consumed directly in making retail sales.

Provides exemption under the sales and use tax for purchases of certain items used by direct marketing retailers.

Requires tangible personal property purchased to prepare, preserve, or serve food for human consumption, or to clean such tangible personal property to be used to prepare food for human consumption for sale in order to receive exemption from the sales and use tax.

Expands the sales and use tax to include as taxable items building maintenance and janitorial service, employment service, employment placement service, exterminating service, physical fitness facility service, and recreation and sports club service.

Imposes the sales and use tax upon things purchased to fulfill a warranty contract.

Increases alcoholic beverages tax rates by 6¢/gallon on wine containing 4% to 14% alcohol, 38¢/gallon on wine containing 14% to 21% alcohol, 33¢/gallon on vermouth, 23¢/gallon on sparkling wine, 40¢/gallon on mixed beverages, \$1.13/gallon on liquor, approximately 2¢/gallon on bottled and canned beer, and \$2.08/barrel on barrelled beer.

Makes railroad companies subject to the corporation franchise tax instead of the public utilities excise tax.

Imposes a tax on the use of natural gas that is not purchased from an Ohio public utility, at the rate of 4.75% of the price of the gas.

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\* Journal report not available at the time this analysis was prepared.

Sales and use taxes

Reduce discount provided to vendor for early payment, return  
(sec. 5739.12)

Currently, vendors, who generally are required to collect sales and use taxes, are entitled to a discount, applied to their liability, for filing their tax returns and remitting the taxes due on time. Currently, the discount equals 1.5% of the amount of tax due from the vendor; the bill would reduce the discount to 0.75%.

Exemptions for items used directly in making retail sales  
(secs. 5739.01 and 5739.02)

Under current sales and use tax law, sales of items to be used or consumed directly in making retail sales are not subject to the sales and use tax. This exception to the sales and use tax allows approximately 88 items to be purchased without the application of the tax. These items range from point of sale equipment such as cash registers to service station sales and repairing/installation items such as lifts and jacks.

Under the bill, the number of items receiving exemption from the tax would be reduced to approximately 13 with a few special exemptions for direct marketing vendors. The bill specifically preserves exemptions for sales where the purpose of the consumer is to use the items transferred in making retail sales. The items exempted would be newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material which prices and describes tangible personal property offered for retail sale. The bill also preserves exemptions for sales to persons engaged in making retail sales of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. Packages include bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar items.

The bill goes on to provide that sales to direct marketing vendors of preliminary materials such as photographs, artwork, typesetting that will be used in printing advertising material, and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales. The bill defines "direct marketing" to mean the method of selling where consumers order tangible personal property by U.S. mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by U.S. mail, delivery service, or common carrier.

advantageous to the state to do so in the highest orderly development and management of state forests and state parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into.

**Sec. 1173-7. Repeal of conflicting provisions.**

SECTION 6. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

J. FREER BITTINGER,  
*Speaker of the House of Representatives.*

PAUL P. YODER,  
*President pro tem. of the Senate.*

Passed December 10, 1935.

Approved December 20, 1935.

MARTIN L. DAVEY,  
*Governor.*

The sectional numbers on the margin hereof are designated as provided by law.

JOHN W. BRICKER,  
*Attorney General.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the 23rd day of December, A. D. 1935.

GEORGE S. MYERS,  
*Secretary of State.*

File No. 23.

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(House Bill No. 572)

**AN ACT**

To extend the period of the excise tax on retail sales to and including the 31st day of March, 1937, and for that purpose to amend sections 5546-1, 5546-2, 5546-3, 5546-8, 5546-9a, 5546-10, 5546-12, 5546-13, 5546-14, 5546-18, 5546-19, 5546-20, 5546-21 and 5546-22 of the General Code and to enact supplemental sections 5546-12a, 5546-13a and 5546-15a of the General Code; to make appropriations of the proceeds of said tax for the year 1936.

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

SECTION 1. That sections 5546-1, 5546-2, 5546-3, 5546-8, 5546-9a, 5546-10, 5546-12, 5546-13, 5546-14, 5546-18, 5546-19, 5546-20, 5546-21

and 5546-22 of the General Code are hereby amended, and supplemental sections to be known as sections 5546-12a, 5546-13a and 5546-15a are hereby enacted, said amended and supplemental sections to read as follows:

### Definitions.

Sec. 5546-1. As used in this act:

"Person" includes individuals, firms, partnerships, associations, joint stock companies, corporations, and combinations of individuals of whatsoever form and character.

"Commission" means the tax commission of Ohio.

"Sale" and "selling" include all transactions whereby title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is granted, for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange or barter, and by any means whatsoever. *A construction contract, pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property or is or is to be used or consumed in performing such contract shall, if the consideration for such incorporation, use or consumption is agreed upon, charged or paid separately from the consideration for the performance of the other obligations of such construction contract, constitute a sale of such tangible personal property for the purpose of this act.*

"Vendor" means the person by whom the transfer effected or license given by a sale is or is to be made or given; and in case two or more persons shall be engaged in business in the same retail establishment under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor for the purpose of this act.

"Consumer" means the person to whom the transfer effected or license given by a sale is or is to be made or given, or to whom the admission is granted.

"Retail sale" and "sales at retail" include all sales excepting those in which the purpose of the consumer is (a) to resell the thing transferred in the form in which the same is, or is to be, received by him; or (b) to incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing or refining, or to use or consume the thing transferred *directly in the production of tangible personal property for sale by manufacturing, \*\*\* processing, \*\*\* refining, \*\*\* mining, farming, horticulture, or floriculture, or directly in making retail sales or directly in the rendition of a public utility service; or (c) security for the performance of an obligation by the vendor; \*\*\* (d) or to use or consume the thing directly in industrial cleaning of tangible personal property.*

"Price" means the aggregate value in money of any thing or things paid or delivered, or promised to be paid or delivered by a consumer to a vendor in the consummation and complete performance of a retail sale

without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, interest or discount paid, or any other expense whatsoever.

The tax collected by the vendor from the consumer under the provisions of this act shall not be considered as a part of the price, but shall be considered as a tax collection for the benefit of the state, and except for the discount authorized in section 8 of this act, no persons other than the state shall derive any benefit from the collection or payment of such tax.

"Retail establishment" means any premises in which the business of selling tangible personal property is conducted or in or from which any retail sales are made.

*"Prepaid tax receipts", whenever used in sections 5546-1 to 5546-23, both inclusive, of the General Code, shall, unless the context otherwise indicates, mean prepaid tax receipts prescribed by section 5546-4 of the General Code of Ohio, and prepaid sales tax cards which shall be prescribed under rules and regulations of the tax commission of Ohio. The tax commission of Ohio shall prescribe the manner of cancelling such cards, and in prescribing the use of such prepaid sales tax cards, shall so design and prescribe the form of such cards that they can be used only in the establishment or establishments of the vendor issuing the same.*

#### **Tax on retail sales; purpose; rates; exceptions.**

Sec. 5546-2. For the purpose of providing revenue with which to meet the needs of the state for poor relief in the existing economic crisis, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this act, an excise tax is hereby levied on each retail sale made in this state of tangible personal property occurring during the period beginning on the first day of January, 1935, and ending on the thirty-first day of \*\*\* March, 1937, with the exceptions hereinafter mentioned and described, as follows:

One cent, if the price is forty cents or less;

Two cents, if the price is more than forty cents and not more than seventy cents;

Three cents, if the price is more than seventy cents and not more than one dollar;

If the price is in excess of one dollar, three cents on each full dollar thereof; and if, in such case, the price is not an even number of dollars, then, in addition to the said tax on each full dollar thereof, one cent, if the price exceeds an even number of dollars by more than eight cents, but not more than forty cents; two cents if such excess is more than forty cents and not more than seventy cents; and three cents if such excess is over seventy cents.

county shall be withheld until such time as the \*\*\* *public official or officials* shall have complied with the provisions of this act *or such other act* and the regulations issued pursuant thereto.

#### **Appeal.**

Sec. 5546-21. The action of the budget commission \*\*\* under the preceding section of this act, may be appealed to the tax commission of Ohio in the manner and with the effect provided in section 5625-28 of the General Code.

#### **Repeal; effect of amendments or suspensions of certain sections.**

Sec. 5546-22. That existing sections 6212-49a and 6212-49b of the General Code, are hereby repealed, and sections 5543-1 to 5543-20, both inclusive, 6212-49q, 6212-49r, 6212-49s and 6212-49t of the General Code are hereby suspended January 1, 1935, until and including \*\*\* *March 31, \*\*\* 1937*. Said amendments or suspensions shall not affect the right to refund for unused stamps purchased under any of said sections which right shall extend to refunds on account of stamps affixed to articles unsold at the end of business on \*\*\* *March 31, \*\*\* 1937*; and the moneys appropriated to the treasurer of state \*\*\* for the purpose of making refunds may be expended for the purpose of making refunds authorized by this section.

#### **Repeal.**

SECTION 2. That existing sections 5546-1, 5546-2, 5546-3, 5546-8, 5546-9a, 5546-10, 5546-12, 5546-13, 5546-14, 5546-18, 5546-19, 5546-20, 5546-21 and 5546-22 of the General Code are hereby repealed.

#### **Appropriations.**

SECTION 3. The sums hereinafter set forth for the purposes hereinafter specified are hereby set apart for the use of the general revenue fund out of the moneys received into the state treasury under the provisions of sections 5546-1 to 5546-20 of the General Code, both inclusive, and appropriated. The sums hereinafter named shall not be expended to pay liabilities incurred subsequent to December 31, 1936.

The appropriations herein made shall be and remain in full force and effect for a period of two years, commencing with the dates on which such appropriations shall take effect, for the purpose of drawing money from the state treasury in payment of liabilities lawfully incurred hereunder and at the expiration of such period of two years, and not before, the unincumbered balances of the moneys hereby appropriated shall lapse into the general revenue fund.

DEPARTMENT OF FINANCE, DIVISION OF TAX  
COMMISSION OF OHIO

Personal service.....	\$600,000.00
Maintenance .....	300,000.00
Printing .....	300,000.00
Printing prepaid sales tax cards.....	125,000.00

AUDITOR OF STATE

Personal service.....	60,000.00
Supplies and equipment.....	10,000.00

TREASURER OF STATE

Personal service.....	260,000.00
Supplies and equipment.....	65,000.00
Refunds .....	100,000.00

ATTORNEY GENERAL

Personal service.....	7,500.00
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For relief fund purposes as may hereafter be defined  
and appropriated by this general assembly..... 6,000,000.00

**Sec. 5546-24. Purpose of act.**

SECTION 4. The intent and purpose of this act includes the extension of the excise tax on retail sales levied by and pursuant to sections 5546-1 to 5546-23, both inclusive, of the General Code until and including the 31st day of March, 1937; and all of the provisions of said sections of the General Code are hereby so extended in effect excepting as affected by the amendments herein made.

J. FREER BITTINGER,  
*Speaker of the House of Representatives.*

PAUL P. YODER,  
*President pro tem. of the Senate.*

Passed December 13, 1935.

Approved December 20, 1935.

MARTIN L. DAVEY,  
*Governor.*

The sectional number on the margin hereof is designated as provided by law.

JOHN W. BRICKER,  
*Attorney General.*

Filed in the office of the Secretary of State at Columbus, Ohio, on  
the 23rd day of December, A. D. 1935.

GEORGE S. MYERS,  
*Secretary of State.*

File No. 24

(119th General Assembly)  
(Amended Substitute House Bill Number 904)

## AN ACT

To amend sections 121.15, 129.55, 129.63, 129.73, 1555.12, 3383.01, 3383.07, 3721.02, 4301.12, 4301.42, 4301.43, 4305.01, 4905.79, 5111.02, 5111.021, 5111.03, 5111.20, 5111.22, 5111.25, 5111.26, 5111.27, 5111.28, 5528.36, 5703.052, 5703.053, 5703.19, 5709.84, 5711.01, 5727.01, 5727.30 to 5727.33, 5727.47, 5727.73, 5733.09, 5735.01, 5735.011, 5735.142, 5739.01, 5739.011, 5739.02, 5739.12, 5743.01, 5743.02, 5743.32, 5743.41, 5743.42, 5743.44, 5743.99, and 5747.02, to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5111.25 (5111.251), to enact new sections 5111.23, 5111.24, 5111.25, and 5111.29 and sections 5111.231, 5111.235, 5111.241, 5111.255, 5111.257, 5111.261, 5111.262, 5111.263, 5111.264, 5111.33, 5111.34, 5111.341, 5120.103, 5743.51 to 5743.66, 5753.01 to 5753.14, and 5753.99, and to repeal sections 5111.222, 5111.23, 5111.24, 5111.29, 5727.34, 5727.40, 5911.13, 5911.14, 5911.15, 5911.16, and 5911.18 of the Revised Code and to amend Section 5 of Am. Sub. H.B. 201 of the 119th General Assembly, as amended by Am. Sub. S.B. 351 of the 119th General Assembly, to amend Sections 40, 149, and 151 of Am. Sub. H.B. 298 of the 119th General Assembly, to amend Section 36 of Am. S.B. 206 of the 119th General Assembly, as most recently amended by Am. Sub. S.B. 351 of the 119th General Assembly, and to amend Sections 28, 54, and 67 of Am. Sub. S.B. 351 of the 119th General Assembly to revise the

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five days from the time of filing the application and statement, shall certify such amount to the director of budget and management and treasurer of state for payment from the tax refund fund provided for in section 5703.052 of the Revised Code. The commissioner may require that the application be supported by the affidavit of the claimant. No refund shall be authorized or ordered for any single claim for the tax on fewer than one hundred gallons of motor vehicle fuel.

The right to receive any refund under this section is not assignable. The payment of this refund shall not be made to any person other than the person originally entitled thereto who used the motor vehicle fuel upon which the claim for refund is based, except that the refund when allowed and certified, as provided in this section, may be paid to the executor, the administrator, the receiver, the trustee in bankruptcy, or the assignee in insolvency proceedings of the person.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Industrial laundry cleaning services are or are to be provided;

(e) Automatic data processing and computer services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing or computer services rather than the receipt of personal or professional services to which automatic data processing or computer services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An

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affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service is provided that originates or terminates in this state and is charged in the records of the telecommunications service vendor to the consumer's telephone number or account in this state, or that both originates and terminates in this state;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

**(j) BUILDING MAINTENANCE AND JANITORIAL SERVICE IS OR IS TO BE PROVIDED;**

**(k) EMPLOYMENT SERVICE IS OR IS TO BE PROVIDED;**

**(l) EMPLOYMENT PLACEMENT SERVICE IS OR IS TO BE PROVIDED;**

**(m) EXTERMINATING SERVICE IS OR IS TO BE PROVIDED;**

**(n) PHYSICAL FITNESS FACILITY SERVICE IS OR IS TO BE PROVIDED;**

**(o) RECREATION AND SPORTS CLUB SERVICE IS OR IS TO BE PROVIDED.**

(4) All transactions by which printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land tile, the sale and erection or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. Other than as provided in this section, "sale" and "selling" do not include professional, insurance, or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter his grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

Physicians, dentists, hospitals, and blood banks operated by non-profit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

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A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(E) "Retail sale" and "sales at retail" include all sales except those in which the purpose of the consumer is:

(1) To resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by him;

(2) To incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the thing transferred directly in mining, including without limitation the extraction from the earth of all substances which are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, and persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas; or directly in making retail sales or directly in the rendition of a public utility service, except that the sales tax levied by section 5739.02 of the Revised Code shall be collected upon all meals, drinks, and food for human consumption sold upon Pullman and railroad coaches. This paragraph does not exempt or except from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;

(4) To use or consume the thing transferred in the process of reclama- tion as required by Chapters 1513. and 1514. of the Revised Code;

(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(6) To use or consume the thing directly in commercial fishing;

(7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(9) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale pursuant to division (E)(7) of this section;

(10) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(11)(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;

(12)(11) To use the thing transferred as qualified research and development equipment.

As used in division (E) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of this section.

Sales conducted through a coin-operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for his use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction, are not retail sales or sales at retail.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing his own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds himself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1) "Price," except as provided in divisions (H)(2) and (3) of this section, means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the retail sale consists of the rental or lease of tangible personal property, "price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of the rental or lease, without any deduction for tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. The sales tax shall be calculated and collected by the lessor on each payment made by the lessee. Price does not include the consideration received as a deposit refundable to the consumer upon return of a beverage container, the consideration received as a deposit on a carton or case that is used for such returnable containers, or the consideration received as a refundable security deposit for the use of tangible personal property to the extent that it actually is refunded, if the consideration for such refundable deposit is separately stated from the consideration received or to be received for the tangible personal property transferred in the retail sale. Such separation must appear in the sales agreement or on the initial invoice or initial billing rendered by the vendor to the consumer. Price is the amount received

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inclusive of the tax, provided the vendor establishes to the satisfaction of the tax commissioner that the tax was added to the price. When the price includes both a charge for tangible personal property and a charge for providing a service and the sale of the property and the charge for the service are separately taxable, or have a separately determinable tax status, the price shall be separately stated for each such charge so the tax can be correctly computed and charged.

The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized in section 5739.12 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in division (H)(3) of this section, "watercraft" includes an outdrive unit attached to the watercraft.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property which was obtained by the person making the sale, through purchase or otherwise, for his own use in this state and which was previously subject to the state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use which are sold by an auctioneer employed

directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or transportation of property or personnel to or from a place where a service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property which is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and which retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used in providing a public utility service as defined in this division.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to section 306.03 of the Revised Code.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a

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county transit board is appointed pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county which is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1) "Automatic data processing and computer services" means: processing of others' data, including keypunching or similar data entry services together with verification thereof; providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment; and services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems. "Automatic data processing and computer services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing and computer services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

- (h) Training personnel in business procedure applications;
- (i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;
- (j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless he was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) "Telecommunications service" means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. "Telecommunications service" includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private communications service purchased from another telecommunications service provider, but does not include any of the following:

(1) Sales of incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight hundred type service, to the person contracting for the receipt of that service;

(2) Sales of private communications service to the person contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;

(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727. of the Revised Code;

(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;

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(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code.

(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749. of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of callers, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used in testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by the consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "BUILDING MAINTENANCE AND JANITORIAL SERVICE" MEANS CLEANING THE INTERIOR OR EXTERIOR OF A BUILDING AND ANY TANGIBLE PERSONAL PROPERTY LOCATED THEREIN OR THEREON, INCLUDING ANY SERVICES INCIDENTAL TO SUCH CLEANING FOR WHICH NO SEPARATE CHARGE IS MADE.

(JJ) "EMPLOYMENT SERVICE" MEANS PROVIDING OR SUPPLYING PERSONNEL, ON A TEMPORARY OR LONG-TERM BASIS, TO PERFORM WORK OR LABOR UNDER THE SUPERVISION OR CONTROL OF ANOTHER, WHEN THE PERSONNEL SO SUPPLIED RECEIVE THEIR WAGES, SALARY, OR OTHER COMPENSATION FROM THE PROVIDER OF THE SERVICE. "EMPLOYMENT SERVICE" DOES NOT INCLUDE:

(1) ACTING AS A CONTRACTOR OR SUBCONTRACTOR, WHERE THE PERSONNEL PERFORMING THE WORK ARE NOT UNDER THE DIRECT CONTROL OF THE PURCHASER.

(2) MEDICAL AND HEALTH CARE SERVICES.

(KK) "EMPLOYMENT PLACEMENT SERVICE" MEANS LOCATING OR FINDING EMPLOYMENT FOR A PERSON OR FINDING OR LOCATING AN EMPLOYEE TO FILL AN AVAILABLE POSITION.

(LL) "EXTERMINATING SERVICE" MEANS ERADICATING OR ATTEMPTING TO ERADICATE VERMIN INFESTATIONS FROM A BUILDING OR STRUCTURE, OR THE AREA SURROUNDING A BUILDING OR STRUCTURE, AND INCLUDES ACTIVITIES TO INSPECT, DETECT, OR PREVENT VERMIN INFESTATION OF A BUILDING OR STRUCTURE.

(MM) "PHYSICAL FITNESS FACILITY SERVICE" MEANS ALL TRANSACTIONS BY WHICH A MEMBERSHIP IS GRANTED, MAINTAINED, OR RENEWED, INCLUDING INITIATION FEES, MEMBERSHIP DUES, RENEWAL FEES, MONTHLY MINIMUM FEES, AND OTHER SIMILAR FEES AND DUES, BY A PHYSICAL FITNESS FACILITY SUCH AS AN ATHLETIC CLUB, HEALTH SPA, OR GYMNASIUM, WHICH ENTITLES THE MEMBER TO USE THE FACILITY FOR PHYSICAL EXERCISE.

(NN) "RECREATION AND SPORTS CLUB SERVICE" MEANS ALL TRANSACTIONS BY WHICH A MEMBERSHIP IS GRANTED, MAINTAINED, OR RENEWED, INCLUDING INITIATION FEES, MEMBERSHIP DUES, RENEWAL FEES, MONTHLY MINIMUM

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Sec. 5739.011. (A) As used in this section:

(1) "Manufacturer" means a person who is engaged in manufacturing, processing, assembling, or refining a product for sale.

(2) "Manufacturing facility" means a single location where a manufacturing operation is conducted, including locations consisting of one or more buildings or structures in a contiguous area owned or controlled by the manufacturer.

(3) "Materials handling" means the movement of the product being or to be manufactured, during which movement the product is not undergoing any substantial change or alteration in its state or form.

(4) "Testing" means a process or procedure to identify the properties or assure the quality of a material or product.

(5) "Completed product" means a manufactured item that is in the form and condition as it will be sold by the manufacturer. An item is completed when all processes that change or alter its state or form or enhance its value are finished, even though the item subsequently will be tested to ensure its quality or be packaged for storage or shipment.

(6) "Continuous manufacturing operation" means the process in which raw materials or components are moved through the steps whereby manufacturing occurs. Materials handling of raw materials or parts from the point of receipt or pre-production storage or of a completed product, to or from storage, to or from packaging, or to the place from which the completed product will be shipped, is not a part of a continuous manufacturing operation.

(B) For purposes of division (E)(10)(9) of section 5739.01 of the Revised Code, the "thing transferred" includes, but is not limited to, any of the following:

(1) Production machinery and equipment that act upon the product or machinery and equipment that treat the materials or parts in preparation for the manufacturing operation;

(2) Materials handling equipment that moves the product through a continuous manufacturing operation; equipment that temporarily stores the product during the manufacturing operation; or, excluding motor vehicles licensed to operate on public highways, equipment used in intraplant or interplant transfers of work in process where the plant or plants between which such transfers occur are manufacturing facilities operated by the same person;

(3) Catalysts, solvents, water, acids, oil, and similar consumables that interact with the product and that are an integral part of the manufacturing operation;

(4) Machinery, equipment, and other tangible personal property used during the manufacturing operation that control, physically support, produce power for, lubricate, or are otherwise necessary for the functioning of production machinery and equipment and the continuation of the manufacturing operation;

(5) Machinery, equipment, fuel, power, material, parts, and other tangible personal property used to manufacture machinery, equipment, or other tangible personal property used in manufacturing a product for sale;

(6) Machinery, equipment, and other tangible personal property used by a manufacturer to test raw materials, the product being manufactured, or the completed product;

(7) Machinery and equipment used to handle or temporarily store scrap that is intended to be reused in the manufacturing operation at the same manufacturing facility;

(8) Electricity, coke, gas, water, steam, and similar substances used in the manufacturing operation; machinery and equipment used for, and fuel consumed in, producing or extracting those substances; and machinery, equipment, and other tangible personal property used to treat, filter, pump, alter voltage, or otherwise make the substance suitable for use in the manufacturing operation;

(9) Machinery, equipment, and other tangible personal property used to transport or transmit electricity, coke, gas, water, steam, or similar substances used in the manufacturing operation from the point of generation, if produced by the manufacturer, or from the point where the substance enters the manufacturing facility, if purchased by the manufacturer, to the manufacturing operation;

(10) Machinery, equipment, and other tangible personal property that treats, filters, cools, refines, or otherwise renders water, steam, acid, oil, solvents, or similar substances used in the manufacturing operation reusable, provided that the substances are intended for reuse and not for disposal, sale, or transportation from the manufacturing facility;

(11) Parts, components, and repair and installation services for items described in division (B) of this section.

(C) For purposes of division (E)(10)(9) of section 5739.01 of the Revised Code, the "thing transferred" does not include any of the following:

(1) Tangible personal property used in administrative, personnel, security, inventory control, record keeping, ordering, billing, or similar functions;

(2) Tangible personal property used in storing raw materials or parts prior to the commencement of the manufacturing operation or used to handle or store a completed product, including storage that actively maintains a completed product in a marketable state or form;

(3) Tangible personal property used to handle or store scrap or waste intended for disposal, sale, or other disposition, other than reuse in the manufacturing operation at the same manufacturing facility;

(4) Realty;

(5) Machinery, equipment, or other tangible personal property used for ventilation, or similar other tangible personal property, the use of which is essential to the operation of the facility;

(6) Tangible personal property used for workers, and equipment;

(7) Tangible personal property used for acid, oil, or other substances;

(8) Machinery and equipment used for research;

(9) Machinery and equipment used to clean, repair, or maintain the facility;

(10) Machinery and equipment used for the Revised Code;

(11) Tangible personal property transferred to a manufacturer in both a wholly exempt and a proportionate manner.

Sec. 5739.02 of the Revised Code meet the needs of the state, and for the purpose of securing a more equal and uniform distribution of the burden of taxation throughout this state.

(A) The tax imposed by section 5739.02 of the Revised Code shall be levied on the time when the property is transferred.

In the event the property is transferred for the purpose of leasing, the tax shall be levied on the lessor.

(B) The tax imposed by section 5739.02 of the Revised Code shall be levied on the lessor.

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(4) Tangible personal property that is or is to be incorporated into realty;

(5) Machinery, equipment, and other tangible personal property used for ventilation, dust, or gas collection, humidity or temperature regulation, or similar environmental control, except machinery, equipment, and other tangible personal property that totally regulates the environment in a special and limited area of the manufacturing facility where the regulation is essential for production to occur;

(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) Machinery, equipment, and other tangible personal property used for research and development;

(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

(10) Motor vehicles registered for operation on the public highways.

(D) For purposes of division (E)(10)(9) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state for general assistance in the existing economic crises, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax shall, as regards such rentals, be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state, or any of its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

## AN ACT

To amend sections 121.15, 129.55, 129.63, 129.73, 1555.12, 3383.01, 3383.07, 3721.02, 4301.12, 4301.42, 4301.43, 4305.01, 4905.79, 5111.02, 5111.021, 5111.03, 5111.20, 5111.22, 5111.25, 5111.26, 5111.27, 5111.28, 5528.36, 5703.052, 5703.053, 5703.19, 5709.84, 5711.01, 5727.01, 5727.30 to 5727.33, 5727.47, 5727.73, 5733.09, 5735.01, 5735.011, 5735.142, 5739.01, 5739.011, 5739.02, 5739.12, 5743.01, 5743.02, 5743.32, 5743.41, 5743.42, 5743.44, 5743.99, and 5747.02, to amend, for the purpose of adopting a new section number as indicated in parentheses, section 5111.25 (5111.251), to enact new sections 5111.23, 5111.24, 5111.25, and 5111.29 and sections 5111.231, 5111.235, 5111.241, 5111.255, 5111.257, 5111.261, 5111.262, 5111.263, 5111.264, 5111.33, 5111.34, 5111.341, 5120.103, 5743.51 to 5743.66, 5753.01 to 5753.14, and 5753.99, and to repeal sections 5111.222, 5111.23, 5111.24, 5111.29, 5727.34, 5727.40, 5911.13, 5911.14, 5911.15, 5911.16, and 5911.18 of the Revised Code and to amend Section 5 of Am. Sub. H.B. 201 of the 119th General Assembly, as amended by Am. Sub. S.B. 351 of the 119th General Assembly, to amend Sections 40, 149, and 151 of Am. Sub. H.B. 298 of the 119th General Assembly, to amend Section 36 of Am. S.B. 206 of the 119th General Assembly, as most recently amended by Am. Sub. S.B. 351 of the 119th General Assembly, and to amend Sections 28, 54, and 67 of Am. Sub. S.B. 351 of the 119th General Assembly to revise the

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(6) Tangible personal property used for the protection and safety of workers, unless the property is attached to or incorporated into machinery and equipment used in a continuous manufacturing operation;

(7) Tangible personal property used to store fuel, water, solvents, acid, oil, or similar items consumed in the manufacturing operation;

(8) Machinery, equipment, and other tangible personal property used for research and development;

(9) Machinery, equipment, and other tangible personal property used to clean, repair, or maintain real or personal property in the manufacturing facility;

(10) Motor vehicles registered for operation on the public highways.

(D) For purposes of division (E)(10)(9) of section 5739.01 of the Revised Code, if the "thing transferred" is a machine used by a manufacturer in both a taxable and an exempt manner, it shall be totally taxable or totally exempt from taxation based upon its quantified primary use. If the "things transferred" are fungibles, they shall be taxed based upon the proportion of the fungibles used in a taxable manner.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state for general assistance in the existing economic crises, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, and for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax shall, as regards such rentals, be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state, or any of its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records such meals as part compensation for services performed or work done;

(6) Sales of motor vehicle fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor vehicle fuel on which a refund of said tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor vehicle fuel when granting a refund of motor vehicle fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of electricity by an electric company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through wires, pipes, or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by him to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, all-purpose vehicles as defined in section 4519.01 of the Revised Code, and manufactured homes;

(9) Sales of services or tangible personal property, other than motor vehicles and manufactured homes, by churches or by nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, is sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of such church or organization. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the constitution of the United States;

(11) The transportation of persons or property, unless such transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches and to nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to

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Charitable purposes means the relief of poverty, the improvement of health through the alleviation of illness, disease, or injury, the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions, the operation of a home for the aged, as defined in section 5701.13 of the Revised Code, the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station, the operation of a nonprofit animal adoption service or a county humane society, the promotion of education by an institution of learning which maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum, the operation of a parent teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extra-curricular activities of a primary or secondary school, the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein, the production of performances in music, dramatics, and the arts, or the promotion of education by an organization engaged in carrying on research in, or the dissemination of scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies, building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property which are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements, materials and services sold to a construction contractor during the period from August 14, 1979, through December 31, 1985, under a claim of exemption as sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code for incorporation into a structure or improvement to real property, building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section, building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code, and building and construction materials and

services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (14) (9) of section 5739.01 of the Revised Code, TO PERSONS ENGAGED IN MAKING RETAIL SALES, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. Packages include bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a registered pharmacist upon the order of a practitioner licensed to prescribe, dispense, and administer drugs to a human being in the course of his professional practice; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs;

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activities mentioned in the Revised Code, TO SALES, or to persons of the personal property that is made with specific designs of material and parts for use primarily in the sale by or on the order of the manufacturer. Packages include bags, wrappings, and "packing" means placing there-

coupons to purchase the same, "food" has the same meaning as in section 958, 7 U.S.C. 2012, as amended to that act.

agriculture, horticulture, or floriculture, or for consumption directly in the preparation of such product by farming, agriculture, or floriculture, or for consumption directly in the preparation of such product for incorporation into such product in production; or consumption in the preparation of such product for use, consumption, or preparation of such product into real property; or consumption directly in the preparation of such product by a pharmacist upon the prescription of a physician, and administration of such product in the practice of medicine; insulin as a drug; urine and blood for use in the diagnosis of diabetes mellitus and hypoglycemia; and needles when used by a physician for the purpose of such use; and oxygen and other gases for use by persons with

breast prostheses, and other devices for support of the human body; wheelchairs; and accessories and parts and acces-

sories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property, manufactured in this state, if sold by the manufacturer in this state to a retailer for use in his retail business outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting and classifying by size; packages, including material and parts for packages, and of machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, where the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) SALES OF WATER BY A NONPROFIT CORPORATION ENGAGED EXCLUSIVELY IN THE TREATMENT, DISTRIBUTION, AND SALE OF WATER TO CONSUMERS, IF SUCH WATER IS DELIVERED TO CONSUMERS THROUGH PIPES OR TUBING.

(26) Fees charged by a licensee for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of such section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;

(28) Sales of tangible personal property directly used in preserving, preparing, or serving food for human consumption, or in maintaining or cleaning such property, to persons licensed to conduct a food service operation pursuant to section 3732.03 of the Revised Code; OF TANGIBLE PERSONAL PROPERTY PRIMARILY USED DIRECTLY:

(a) TO PREPARE FOOD FOR HUMAN CONSUMPTION FOR SALE;

(b) TO PRESERVE FOOD WHICH HAS BEEN OR WILL BE PREPARED FOR HUMAN CONSUMPTION FOR SALE BY THE FOOD SERVICE OPERATOR, NOT INCLUDING TANGIBLE PERSONAL PROPERTY USED TO DISPLAY FOOD FOR SELECTION BY THE CONSUMER; AND

(c) TO CLEAN TANGIBLE PERSONAL PROPERTY USED TO PREPARE OR SERVE FOOD FOR HUMAN CONSUMPTION FOR SALE.

(29) Sales of animals by nonprofit animal adoption services or county humane societies;

(30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;

(31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;

(32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;

(33) The sale, lease, repair, and maintenance of; parts for; or items attached to or incorporated in motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;

(34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by such headquarters;

(35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled

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based upon the use of the thing purchased in providing the telecommunica- tions service.

(36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal which has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufac- tured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

(37)(a) SALES WHERE THE PURPOSE OF THE CONSUMER IS TO USE OR CONSUME THE THINGS TRANSFERRED IN MAK- ING RETAIL SALES AND CONSISTING OF NEWSPAPER IN- SERTS, CATALOGUES, COUPONS, FLYERS, GIFT CERTIF- ICATES, OR OTHER ADVERTISING MATERIAL WHICH PRICES AND DESCRIBES TANGIBLE PERSONAL PROPERTY OFFERED FOR RETAIL SALE.

(b) SALES TO DIRECT MARKETING VENDORS OF PRELIMI- NARY MATERIALS SUCH AS PHOTOGRAPHS, ARTWORK, TYPE- SETTING THAT WILL BE USED IN PRINTING ADVERTISING MATERIAL, AND OF EQUIPMENT SUCH AS TELEPHONES, COMPUTERS, FACSIMILE MACHINES, AND SIMILAR TANGI- BLE PERSONAL PROPERTY PRIMARILY USED TO ACCEPT OR- DERS FOR DIRECT MARKETING RETAIL SALES.

FOR PURPOSES OF DIVISION (B)(37) OF THIS SECTION, "DI- RECT MARKETING" MEANS THE METHOD OF SELLING WHERE CONSUMERS ORDER TANGIBLE PERSONAL PROP- ERTY BY UNITED STATES MAIL, DELIVERY SERVICE, OR TELE- COMMUNICATION AND THE VENDOR DELIVERS OR SHIPS THE TANGIBLE PERSONAL PROPERTY SOLD TO THE CONSUM- ER FROM A WAREHOUSE, CATALOGUE DISTRIBUTION CEN- TER, OR SIMILAR FULFILLMENT FACILITY BY MEANS OF THE UNITED STATES MAIL, DELIVERY SERVICE, OR COMMON CARRIER.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products includ- ing ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages which are ordinarily dispensed at bars and soda fountains or in connection therewith

other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the Revised Code.

Sec. 5739.12. Each person who has or is required to have a vendor's license shall, on or before the twenty-third day of each month, make and file a return for the preceding month, on forms prescribed by the tax commissioner, showing the amount of tax due from the vendor to the state for the period covered by the return, and such other information as the commissioner deems necessary for the proper administration of this chapter. The commissioner may extend the time for making and filing returns and may require that the return for the last month of any annual or semiannual period, as determined by the commissioner, be a reconciliation return detailing the vendor's sales activity for the preceding annual or semiannual period. The reconciliation return shall be filed by the last day of the month following the last month of the annual or semiannual period. The

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(123rd General Assembly)  
(House Bill Number 612)

## AN ACT

To amend sections 3734.904, 3734.907, 3769.088, 4301.422, 4303.33, 4305.13, 4305.131, 5703.05, 5703.11, 5703.37, 5705.37, 5711.04, 5711.18, 5711.25, 5711.28, 5711.31, 5717.01, 5717.02, 5727.11, 5727.26, 5727.47, 5727.89, 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, 5728.08, 5728.09, 5728.10, 5733.11, 5733.28, 5735.01, 5735.023, 5735.05, 5735.12, 5735.121, 5735.14, 5735.141, 5735.142, 5735.145, 5735.18, 5735.23, 5739.01, 5739.02, 5739.03, 5739.032, 5739.033, 5739.12, 5739.122, 5739.13, 5739.133, 5739.15, 5739.17, 5739.19, 5739.30, 5741.02, 5741.121, 5743.03, 5743.081, 5743.082, 5743.52, 5743.56, 5747.07, 5747.09, 5747.13, 5747.15, 5749.07, 5749.08, and 5749.15, to enact sections 5703.054, 5703.055, 5703.056, and 5735.012, and to repeal sections 5703.141, 5735.17, 5735.32, 5739.161, and 5747.082 of the Revised Code to authorize the electronic filing of certain documents with the tax commissioner and treasurer of state, extend the time for filing petitions for reassessments, make various charges and penalties discretionary rather than mandatory, change the method of service of notices by the tax commissioner, authorize the use of delivery services instead of the postal service for delivery of certain documents to the tax commissioner, board of tax appeals, and treasurer of state, redefine and specify certain vehicles for purposes of the highway use and motor fuel taxes, establish procedures for claiming exemptions from the use

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*Be it enacted by the Gen*

SECTION 1. That sect  
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5728.09, 5728.10, 5733.11,  
5735.121, 5735.14, 5735.  
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tomary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

~~(37)~~ (36)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)~~(37)~~ (36)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)~~(37)~~ (36) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

~~(38)~~ (37) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

~~(39)~~ (38) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

~~(40)~~ (39) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

~~(41)~~ (40) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added

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**Sec. 5739.02.** For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A)(1) The tax shall be collected as provided in section 5739.025 of the Revised Code, provided that on and after July 1, 2003, and on or before June 30, 2005, the rate of tax shall be six per cent. On and after July 1, 2005, the rate of the tax shall be five and one-half per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

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

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of

other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) Except for transactions that are sales under division (B)(3)(s)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inure to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or a center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or

the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(43)(42)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at

retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(14)(15) of this section does not apply to persons engaged in highway transportation for hire.

(16) Sales of food to persons using food stamp benefits to purchase the food. As used in this division, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being, that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased for use by persons with medical problems for medical purposes by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

- (28) Sales of animals by nonprofit animal adoption services or county humane societies;
- (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;
- (30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;
- (31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;
- (32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;
- (33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;
- (34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(43)(42)(a) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.
- ~~(35) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.~~

~~(36)~~(35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)~~(36)~~(35)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)~~(36)~~(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

~~(37)~~(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

~~(38)~~(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

~~(39)~~(38) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

~~(40)~~(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;

~~(41)~~(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division ~~(B)(43)~~(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

~~(42)~~(41) Sales to a person providing services under division ~~(B)(3)(s)(r)~~ of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.

~~(43)~~(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(~~36~~)(35) of this section.

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service.

As used in division (B)(~~43~~)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

(~~44~~)(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in

washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

~~(45)~~(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

~~(46)~~(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of section 5739.01 of the Revised Code.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

~~(D)~~(E)(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.

(120th General Assembly)  
(Substitute House Bill Number 715)

# AN ACT

EXHIBIT

# AN ACT

Substitute House Bill No. 715  
120th General Assembly  
of Ohio

## Reappropriations / Budget Corrections

To amend sections 102.02, 103.73, 109.36, 111.16, 121.12, 121.40, 123.022, 124.14, 124.152, 124.181, 124.382, 124.385, 124.82, 125.02, 125.04, 125.041, 125.05, 125.22, 126.21, 127.16, 153.15, 164.04, 181.52, 317.08, 319.36, 329.03, 503.01, 715.70, 917.23, 1309.42, 1501.27, 1533.10, 1533.11, 1533.111, 1533.112, 1533.32, 2151.011, 2151.38, 2317.56, 2933.41, 2933.72, 2933.73, 2933.74, 2933.75, 3109.17, 3301.0711, 3301.13, 3301.50, 3301.51, 3313.60, 3313.61, 3313.611, 3317.022, 3317.06, 3318.01, 3318.03, 3318.21, 3318.22, 3318.26, 3318.28, 3319.088, 3319.29, 3319.39, 3333.04, 3334.08, 3351.08, 3333.01, 3333.02, 3701.83, 3702.02, 3704.01, 3704.011, 3704.036, 3704.08, 3704.99, 3719.21, 3719.36, 3721.01, 3721.511, 3721.52, 3726.01, 3726.08, 3745.11, 3935.04, 3935.05, 4141.21, 4301.17, 4701.03, 4701.061, 4701.10, 4715.16, 4723.02, 4723.06, 4723.07, 4723.08, 4723.09, 4723.28, 4727.03, 4727.13, 4729.65, 4755.03, 4755.65, 4923.12, 5101.75, 5101.751, 5101.753, 5101.754, 5101.84, 5104.01, 5104.30, 5104.34, 5104.38, 5104.39, 5107.16, 5107.20, 5107.21, 5107.22, 5107.35, 5111.17, 5111.20, 5111.204, 5111.205, 5111.23, 5111.231, 5111.235, 5111.24, 5111.25, 5111.251, 5111.26, 5111.27, 5111.85, 5112.01, 5112.03, 5112.06, 5112.07, 5112.09, 5112.31, 5112.32, 5112.33, 5112.35, 5112.37, 5112.39, 5113.01, 5113.032, 5113.06, 5113.061, 5115.011, 5115.05, 5115.06, 5139.01, 5139.13, 5139.33, 5139.38, 5139.41, 5139.42, 5139.43, 5139.44, 5139.45, 5139.85, 5139.86, 5153.165,

5501.04, 5501.46, 5513.01, 5540.03, 5709.65, 5715.35, 5715.50, 5727.06, 5727.10, 5727.11, 5727.111, 5733.022, 5733.03, 5733.06, 5733.061, 5733.063, 5733.067, 5733.068, 5733.069, 5733.0610, 5739.01, 5739.02, 5741.17, 5743.05, 5747.02, 5747.022, 5747.05, 5747.051, 5747.054, 5747.055, 5747.057, 5747.058, 5747.07, 5907.13, 5909.02, and 6111.09; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 123.022 (105.41), 1501.26 (149.32), and 1501.27 (149.321); to enact sections 124.135, 125.212, 135.451, 179.01, 179.02, 179.03, 179.04, 715.71, 901.20, 1501.06, 1503.141, 3301.0724, 3301.521, 3317.21, 3317.22, 3317.23, 3702.531, 3793.20, 5111.87, 5111.88, 5120.091, 5733.32, 5733.98, 5747.28, 5747.98, 5907.131, and 5907.141; and to repeal sections 113.44, 1701.921, 5111.221, and 5153.166 of the Revised Code and to amend Section 13 of Am. Sub. H. B. 107 of the 120th General Assembly; to amend Sections 5, 7, 7.11, 7.12, 8, 8.01, 8.02, 11, 14, 15, 16, 20, 26, 28, 30, 33, 33.01, 33.04, 33.07, 33.09, 33.10, 35, 36, 36.01, 36.02, 36.04, 36.05, 36.06, 36.09, 36.27, 36.31, 41, 48, 48.01, 52, 52.01, 52.09, 52.11, 60, 61, 67, 67.02, 70, 72, 84, 84.01, 84.10, 85, 85.01, 86, 92, 95, 101, 102, 102.01, 107, 108, 111, 118, 123, 126, 129, 206, 212, and 213 of Am. Sub. H. B. 152 of the 120th General Assembly; to amend Section 15.08 of Am. Sub. H. B. 154 of the 120th General Assembly; to amend Section 39 of Am. Sub. S. B. 351 of the 119th General Assembly; to amend Section 14 of Sub. S. B. 359 of the 119th General Assembly; to amend Sections 3 and 4 of Sub. H. B. 508 of the 119th General Assembly; to amend, for the purpose of adopting a new section number as indicated in parentheses, Section 8.03 (52.18) of Am. Sub. H. B. 152 of the 120th General Assembly; to repeal Section 13 of Am. Sub. S. B. 351 of the 119th General Assembly, as

subsequently amended; to repeal Section 17 of Am. Sub. S. B. 351 of the 119th General Assembly; to repeal Sections 52.04, 193, and 205 of Am. Sub. H. B. 152 of the 120th General Assembly; and to repeal Section 5 of Am. Sub. H. B. 156 of the 120th General Assembly, to supplement and modify the authorizations and conditions established for the operation and administration of state programs, to make operating appropriations for the biennium ending June 30, 1995, to make appropriations for the biennium ending June 30, 1996, and to repeal the version of section 4141.21 of the Revised Code that was to have taken effect October 1, 1994.

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

SECTION 1. That sections 102.02, 103.73, 109.36, 111.16, 121.02, 123.022, 124.14, 124.152, 124.151, 124.332, 124.385, 124.82, 125.02, 125.041, 125.05, 125.22, 126.21, 127.16, 153.15, 164.04, 181.32, 181.33, 181.34, 181.35, 181.36, 329.03, 503.01, 715.70, 917.23, 1309.42, 1501.27, 1533.01, 1533.02, 1533.03, 1533.04, 1533.05, 1533.06, 1533.07, 1533.08, 1533.09, 1533.10, 1533.11, 1533.12, 1533.32, 2151.011, 2151.38, 2317.56, 2933.01, 2933.02, 2933.03, 2933.04, 2933.05, 2933.06, 2933.07, 2933.08, 2933.09, 2933.10, 2933.11, 2933.12, 2933.13, 2933.14, 2933.15, 2933.16, 2933.17, 2933.18, 2933.19, 2933.20, 2933.21, 2933.22, 2933.23, 2933.24, 2933.25, 2933.26, 2933.27, 2933.28, 2933.29, 2933.30, 2933.31, 2933.32, 2933.33, 2933.34, 2933.35, 2933.36, 2933.37, 2933.38, 2933.39, 2933.40, 2933.41, 2933.42, 2933.43, 2933.44, 2933.45, 2933.46, 2933.47, 2933.48, 2933.49, 2933.50, 2933.51, 2933.52, 2933.53, 2933.54, 2933.55, 2933.56, 2933.57, 2933.58, 2933.59, 2933.60, 2933.61, 2933.62, 2933.63, 2933.64, 2933.65, 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(5) THE CREDIT FOR PURCHASES OF QUALIFYING GRAPE PRODUCTION PROPERTY UNDER SECTION 5733.32 OF THE REVISED CODE;

(6) THE EXPORT SALES CREDIT UNDER SECTION 5733.069 OF THE REVISED CODE;

(7) THE ENTERPRISE ZONE CREDITS UNDER SECTION 5703.65 OF THE REVISED CODE;

(8) THE REFUNDABLE JOBS CREATION CREDIT UNDER SECTION 5733.0610 OF THE REVISED CODE.

(B) FOR ANY CREDIT EXCEPT THE REFUNDABLE JOBS CREATION CREDIT, THE AMOUNT OF THE CREDIT FOR A TAX YEAR SHALL NOT EXCEED THE TAX DUE AFTER ALLOWING FOR ANY OTHER CREDIT THAT PRECEDES IT IN THE ORDER REQUIRED UNDER THIS SECTION. ANY EXCESS AMOUNT OF A PARTICULAR CREDIT MAY BE CARRIED FORWARD IF AUTHORIZED UNDER THE SECTION CREATING THAT CREDIT.

Sec. 5739.01. As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, the state and its political subdivisions, and combinations of individuals of any form.

(B) "Sale" and "selling" include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is or is to be granted;

(2) All transactions by which lodging by a hotel is or is to be furnished to transient guests;

(3) All transactions by which:

(a) An item of tangible personal property is or is to be repaired, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code;

(b) An item of tangible personal property is or is to be installed, except property, the purchase of which would be exempt from the tax imposed by section 5739.02 of the Revised Code or property that is or is to be incorporated into and will become a part of a production, transmission, transportation, or distribution system for the delivery of a public utility service;

(c) The service of washing, cleaning, waxing, polishing, or painting a motor vehicle is or is to be furnished;

(d) Industrial laundry cleaning services are or are to be provided;

(e) Automatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing computer services, or electronic information services rather than the receipt of personal or professional services to which auto-

matic data processing, computer services, or electronic information services are incidental or supplemental. Notwithstanding any other provision of this chapter, such transactions that occur between members of an affiliated group are not sales. An affiliated group means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporation's common stock with voting rights.

(f) Telecommunications service is provided that originates or terminates in this state and is charged in the records of the telecommunications service vendor to the consumer's telephone number or account in this state, or that both originates and terminates in this state;

(g) Landscaping and lawn care service is or is to be provided;

(h) Private investigation and security service is or is to be provided;

(i) Information services or tangible personal property is provided or ordered by means of a nine hundred telephone call;

(j) Building maintenance and janitorial service is or is to be provided;

(k) Employment service is or is to be provided;

(l) Employment placement service is or is to be provided;

(m) Exterminating service is or is to be provided;

(n) Physical fitness facility service is or is to be provided;

(o) Recreation and sports club service is or is to be provided.

(4) All transactions by which printed, imprinted, overprinted, lithographic, multithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter are or are to be furnished or transferred;

(5) The production or fabrication of tangible personal property or a consideration for consumers who furnish either directly or indirectly the materials used in the production of fabrication work; and include the furnishing, preparing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing, or serving such tangible personal property. Except as provided in section 5739.03 of the Revised Code, a construction contract pursuant to which tangible personal property is or is to be incorporated into a structure or improvement on and becoming a part of real property is not a sale of such tangible personal property. The construction contractor is the consumer of such tangible personal property, provided that the sale and installation of carpeting, the sale and installation of agricultural land title, the sale and installation or installation of portable grain bins, or the provision of landscaping and lawn care service and the transfer of property as part of such service is never a construction contract. The transfer of copyrighted motion picture films for exhibition purposes is not a sale, except such films as are used solely for advertising purposes. Other than as provided in this section, "sale" and "selling" do not include professional, insurance or personal service transactions which involve the transfer of tangible personal property as an inconsequential element, for which no separate charges are made.

As used in division (B)(5) of this section:

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used directly in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter his grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, if the corporation is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders;

(7) All transactions in which a warranty, maintenance or service contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided.

(C) "Vendor" means the person providing the service or by whom the transfer effected or license given by a sale is or is to be made or given and, for sales described in division (B)(3)(i) of this section, the telecommunications service vendor that provides the nine hundred telephone service; if two or more persons are engaged in business at the same place of business under a single trade name in which all collections on account of sales by each are made, such persons shall constitute a single vendor.

Physicians, dentists, hospitals, and veterinarians who are engaged in selling tangible personal property as received from others, such as eyeglasses, mouthwashes, dentifrices, or similar articles, are vendors. Veterinarians who are engaged in transferring to others for a consideration drugs, the dispensing of which does not require an order of a licensed veterinarian or physician under federal law, are vendors.

(D)(1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B)(3)(f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by non-profit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section.

(4) A person who warrants tangible personal property pursuant to a warranty or a maintenance or service contract to the consumer of all tangible personal property and services purchased for use or consumption in the performance of the warranty or contract. The purchase of such property and services is not subject to the exception for resale under division (E)(1) of this section or for incorporation into a product for sale unless the tangible personal property being repaired or replaced is a component part of an item covered under another person's warranty. The disposal or return of tangible personal property by the warrantor to a supplier for repair, replacement, or credit pursuant to the terms of a warranty is not a sale within the meaning of division (D) of this section.

(E) "Retail sale" and "sales at retail" include all sales except those in which the purpose of the consumer is:

(1) To resell the thing transferred or benefit of the service provided by a person engaging in business, in the form in which the same is, or is to be, received by him;

(2) To incorporate the thing transferred as a material or a part, into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining, or to use or consume the thing transferred directly in mining, including without limitation the extraction from the earth of all substances which are classed geologically as minerals production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, and persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas; directly in the rendition of a public utility service, except that the sales tax levied by section 5739.02 of the Revised Code shall be collected upon all meals, drinks, and food for human consumption sold upon Pullman and railroad coaches. This paragraph does not exempt or except from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(3) To hold the thing transferred as security for the performance of an obligation of the vendor;

(4) To use or consume the thing transferred in the process of reclamation as required by Chapters 1513, and 1514, of the Revised Code;

(5) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(6) To use or consume the thing directly in commercial fishing;

(7) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of magazines distributed as controlled circulation publications;

(8) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other reproductions or reproductions of written or graphic matter;

(9) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(10) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as defined in division (B)(7) of this section, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty contract, or agreement would be exempt on its purchase from the tax imposed by section 5739.02 of the Revised Code;

(11) To use the thing transferred as qualified research and development equipment;

(12) TO USE OR CONSUME THE THING TRANSFERRED PRIMARILY IN STORING, TRANSPORTING, MAILING, OR OTHERWISE HANDLING PURCHASED SALES INVENTORY IN A WAREHOUSE, DISTRIBUTION CENTER, OR SIMILAR FACILITY WHEN THE INVENTORY IS PRIMARILY DISTRIBUTED OUTSIDE THIS STATE TO RETAIL STORES OF THE PERSON WHO OWNS OR CONTROLS THE WAREHOUSE, DISTRIBUTION CENTER, OR SIMILAR FACILITY, TO RETAIL STORES OF AN AFFILIATED GROUP OF WHICH THAT PERSON IS A MEMBER, OR BY MEANS OF DIRECT MARKETING. DIVISION (E)(12) OF THIS SECTION DOES NOT APPLY TO MOTOR VEHICLES REGISTERED FOR OPERATION ON THE PUBLIC HIGHWAYS, AS USED IN DIVISION (E)(12) OF THIS SECTION, "AFFILIATED GROUP" HAS THE SAME MEANING AS IN DIVISION (B)(3)(e) OF THIS SECTION AND "DIRECT MARKETING" HAS THE SAME MEANING AS IN DIVISION (B)(37) OF SECTION 5739.02 OF THE REVISED CODE.

(13) TO USE OR CONSUME THE THING TRANSFERRED TO FULFILL A CONTRACTUAL OBLIGATION INCURRED BY A WARRANTOR PURSUANT TO A WARRANTY PROVIDED AS A PART OF THE PRICE OF THE TANGIBLE PERSONAL PROPERTY SOLD OR BY A VENDOR OF A WARRANTY, MAINTENANCE OR SERVICE CONTRACT, OR SIMILAR AGREEMENT THE PROVISION OF WHICH IS DEFINED AS A SALE UNDER DIVISION (B)(7) OF THIS SECTION.

As used in division (E) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of this section.

Sales conducted through a coin-operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for his use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction, are not retail sales or sales at retail.

(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Busi-

ness" does not include the activity of a person in managing and investing his own funds.

(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator the holder holds himself out to the public as conducting such business. Making a casual sale is not engaging in business.

(H)(1) "Price," except as provided in divisions (H)(2) and (3) of this section, means the aggregate value in money of anything paid or delivered or promised to be paid or delivered, in the complete performance of a retail sale, without any deduction on account of the cost of the property sold, cost of materials used, labor or service cost, interest, discount paid or allowed after the sale is consummated, or any other expense. If the retail sale consists of the rental or lease of tangible personal property, "price" means the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of the rental or lease without any deduction for tax, interest, labor or service charge, damage liability waiver, termination or damage charge, discount paid or allowed after the lease is consummated, or any other expense. The sales tax shall be calculated and collected by the lessor on each payment made by the lessee. Price does not include the consideration received as a deposit refundable to the consumer upon return of a beverage container, a consideration received as a deposit on a carton or case that is used for such returnable containers, or the consideration received as a refundable security deposit for the use of tangible personal property to the extent that it actually is refunded, if the consideration for such refundable deposit is separately stated from the consideration received or to be received for the tangible personal property transferred in the retail sale. Such separate consideration must appear in the sales agreement or on the initial invoice or initial bill rendered by the vendor to the consumer. Price is the amount received, inclusive of the tax, provided the vendor establishes to the satisfaction of the tax commissioner that the tax was added to the price. When the price includes both a charge for tangible personal property and a charge for providing a service and the sale of the property and the charge for the service are separately taxable, or have a separately determinable tax status, the price shall be separately stated for each such charge so the tax can be correctly computed and charged.

The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state and of counties levying an additional sales tax pursuant to section 5739.021 and 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized in section 5739.12 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of such tax.

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section.

reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in division (H)(3) of this section, "watercraft" includes an outdrive unit attached to the watercraft.

(1) "Receipts" means the total amount of the prices of the sales of vendors, provided that cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by credit.

(J) "Place of business" means any location at which a person engages in business.

(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.

(L) "Casual sale" means a sale of an item of tangible personal property which was obtained by the person making the sale, through purchase or otherwise, for his own use in this state and which was previously subject to the state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use which are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.

(M) "Hotel" means every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty consecutive days.

(O) "Making retail sales" means the effecting of transactions wherein one party is obligated to pay the price and the other party is obligated to provide a service or to transfer title to or possession of the item sold. "Making retail sales" does not include the preliminary acts of promoting or soliciting the retail sales, other than the distribution of printed matter which displays or describes and prices the item offered for sale, nor does it include delivery of a predetermined quantity of tangible personal property or transportation of personnel to or from a place where a

service is performed, regardless of whether the vendor is a delivery vendor.

(P) "Used directly in the rendition of a public utility service" means that property which is to be incorporated into and will become a part of the consumer's production, transmission, transportation, or distribution system and which retains its classification as tangible personal property after such incorporation; fuel or power used in the production, transmission, transportation, or distribution system; and tangible personal property used in the repair and maintenance of the production, transmission, transportation or distribution system, including only such motor vehicles as are specially designed and equipped for such use. Tangible personal property and services used primarily in providing highway transportation for hire are not used in providing a public utility service as defined in this division.

(Q) "Refining" means removing or separating a desirable product from raw or contaminated materials by distillation or physical, mechanical, or chemical processes.

(R) "Assembly" and "assembling" mean attaching or fitting together parts to form a product, but do not include packaging a product.

(S) "Manufacturing operation" means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending, or otherwise committing such materials or parts to the manufacturing process. "Manufacturing operation" does not include packaging.

(T) "Fiscal officer" means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to section 306.03 of the Revised Code.

(U) "Transit authority" means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit board is appointed pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(V) "Legislative authority" means, with respect to a regional transit authority, the board of trustees thereof, and with respect to a county which is a transit authority, the board of county commissioners.

(W) "Territory of the transit authority" means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(X) "Providing a service" means providing or furnishing anything described in division (B)(3) of this section for consideration.

(Y)(1)(a) "Automatic data processing" means: processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.

(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.<sup>2</sup>

(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:

(i) Examining or acquiring data stored in or accessible to the computer equipment;

(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.

(d) "Automatic data processing, computer services, or electronic information services" shall not include personal or professional services.

(2) As used in divisions (B)(3)(e) and (Y)(1) of this section, "personal and professional services" means all services other than automatic data processing, computer services, or electronic information services, including but not limited to:

(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;

(b) Analyzing business policies and procedures;

(c) Identifying management information needs;

(d) Feasibility studies including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;

(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled and reported so that it will be meaningful to management;

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;

(g) Testing of business procedures;

(h) Training personnel in business procedure applications;

(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium.

(j) Providing debt collection services by any oral, written, graphic, or electronic means.

The services listed in divisions (Y)(2)(a) to (j) of this section are not automatic data processing or computer services.

(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless he was the holder of a permit or certificate of the types described in division (Z)(1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.

(AA) "Telecommunications service" means the transmission of any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium such as wires, cables, microwaves, cellular radio, radio waves, light waves, or any combination of those or similar media. "Telecommunications service" includes message toll service even though the vendor provides the message toll service by means of wide area transmission type service or private communications service purchased from another telecommunications service provider, but does not include any of the following:

(1) Sales of incoming or outgoing wide area transmission service or wide area transmission type service, including eight hundred or eight hundred type service, to the person contracting for the receipt of that service;

(2) Sales of private communications service to the person contracting for the receipt of that service that entitles the purchaser to exclusive or priority use of a communications channel or group of channels between exchanges;

(3) Sales of telecommunications service by companies subject to the excise tax imposed by Chapter 5727, of the Revised Code;

(4) Sales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service;

(5) Value added nonvoice services in which computer processing applications are used to act on the form, content, code, or protocol of the information to be transmitted;

(6) Transmission of interactive video programming by a cable television system as defined in section 505.90 of the Revised Code.

(BB) "Industrial laundry cleaning services" means removing soil or dirt from or supplying towels, linens, or articles of clothing that belong to others and are used in a trade or business.

(CC) "Magazines distributed as controlled circulation publications" means magazines containing at least twenty-four pages, at least twenty-five per cent editorial content, issued at regular intervals four or more

times a year, and circulated without charge to the recipient, provided that such magazines are not owned or controlled by individuals or business concerns which conduct such publications as an auxiliary to, and essentially for the advancement of the main business or calling of, those who own or control them.

(DD) "Landscaping and lawn care service" means the services of planting, seeding, sodding, removing, cutting, trimming, pruning, mulching, aerating, applying chemicals, watering, fertilizing, and providing similar services to establish, promote, or control the growth of trees, shrubs, flowers, grass, ground cover, and other flora, or otherwise maintaining a lawn or landscape grown or maintained by the owner for ornamentation or other nonagricultural purpose. However, "landscaping and lawn care service" does not include the providing of such services by a person who has less than five thousand dollars in sales of such services during the calendar year.

(EE) "Private investigation and security service" means the performance of any activity for which the provider of such service is required to be licensed pursuant to Chapter 4749, of the Revised Code, or would be required to be so licensed in performing such services in this state, and also includes the services of conducting polygraph examinations and of monitoring or overseeing the activities on or in, or the condition of, the consumer's home, business, or other facility by means of electronic or similar monitoring devices. "Private investigation and security service" does not include special duty services provided by off-duty police officers, deputy sheriffs, and other peace officers regularly employed by the state or a political subdivision.

(FF) "Information services" means providing conversation, giving consultation or advice, playing or making a voice or other recording, making or keeping a record of the number of calls, and any other service provided to a consumer by means of a nine hundred telephone call, except when the nine hundred telephone call is the means by which the consumer makes a contribution to a recognized charity.

(GG) "Research and development" means designing, creating, or formulating new or enhanced products, equipment, or manufacturing processes, and conducting scientific or technological inquiry and experimentation in the physical sciences with the goal of increasing scientific knowledge which may reveal the bases for new or enhanced products, equipment, or manufacturing processes.

(HH) "Qualified research and development equipment" means capitalized tangible personal property, and leased personal property that would be capitalized if purchased, used by a person primarily to perform research and development. Tangible personal property primarily used for testing, as defined in division (A)(4) of section 5739.011 of the Revised Code, or used for recording or storing test results, is not qualified research and development equipment unless such property is primarily used by a consumer in testing the product, equipment, or manufacturing process being created, designed, or formulated by the consumer in the research and development activity or in recording or storing such test results.

(II) "Building maintenance and janitorial service" means cleaning the interior or exterior of a building and any tangible personal property located therein or thereon, including any services incidental to such cleaning for which no separate charge is made. However, "building maintenance and janitorial service" does not include the providing of such service by a person who has less than five thousand dollars in sales of such service during the calendar year.

(JJ) "Employment service" means providing or supplying personnel, on a temporary or long-term basis, to perform work or labor under the supervision or control of another, when the personnel so supplied receive their wages, salary, or other compensation from the provider of the service. "Employment service" does not include:

(1) Acting as a contractor or subcontractor, where the personnel performing the work are not under the direct control of the purchaser.

(2) Medical and health care services.

(3) Supplying personnel to a purchaser pursuant to a contract of at least one year between the service provider and the purchaser that specifies that each employee covered under the contract is assigned to the purchaser on a permanent basis.

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section.

(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position.

(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure.

(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise.

(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members and includes an aviation club, gun or shooting club, yacht club, card club, swimming club, tennis club, golf club, country club, riding club, amateur sports club, or similar organization.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state for general assistance in the existing economic crises, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout

(eff. 06-30-05)

**Sec. 5739.02.** For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A)(1) The tax shall be collected as provided in section 5739.025 of the Revised Code, provided that on and after July 1, 2003, and on or before June 30, 2005, the rate of tax shall be six per cent. On and after July 1, 2005, the rate of the tax shall be five and one-half per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

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

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installment of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of

other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) Except for transactions that are sales under division (B)(3)(s)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inure to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or

the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(43)(42)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at

retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(14)(15) of this section does not apply to persons engaged in highway transportation for hire.

(16) Sales of food to persons using food stamp benefits to purchase the food. As used in this division, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs for a human being; that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased for use by persons with medical problems for medical purposes by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes by hospitals, nursing homes, or other medical facilities;

(19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and when such devices or equipment are for use by a human being.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:

(a) To prepare food for human consumption for sale;

(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;

(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.

- (28) Sales of animals by nonprofit animal adoptionservicesor county humane societies;
- (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;
- (30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;
- (31) Sales and erection or installation of portable grainbins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;
- (32) The sale, lease, repair, and maintenance of, partsfor, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;
- (33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;
- (34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(43)(42)(a) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.
- (35) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form. "Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

~~(36)~~~~(35)~~(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)~~(36)~~~~(35)~~(a) of this section; and of equipments such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)~~(36)~~~~(35)~~ of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

~~(37)~~~~(36)~~ Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

~~(38)~~~~(37)~~ Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

~~(39)~~~~(38)~~ Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

~~(40)~~~~(39)~~ Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;

~~(41)~~(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division ~~(B)(43)~~(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.

~~(42)~~(41) Sales to a person providing services under division (B)(3)~~(s)~~(r) of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.

~~(43)~~(42) Sales where the purpose of the purchaser is to do any of the following:

(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, agriculture, horticulture, and floriculture, or exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;

(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;

(d) To use or consume the thing directly in commercial fishing;

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;

(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;

(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;

(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;

(i) To use the thing transferred as qualified research and development equipment;

(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(36)(35) of this section.

(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service.

As used in division (B)(43)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

(44)(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in

washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

~~(45)~~(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.

~~(46)~~(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.

(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of section 5739.01 of the Revised Code.

(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

~~(D)~~(E)(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the Appendix of Appellant was sent by regular U.S. mail to J. Donald Mottley, Taft, Stettinius & Hollister, LPP, 65 East State Street, Suite 2100, Columbus, Ohio 43215-4221, counsel for Appellee, on this 13<sup>th</sup> day of August, 2010.

  
BARTON A. HUBBARD  
Assistant Attorney General