

In the
Supreme Court of Ohio

SUSAN C. CRUZ,

Appellant,

v.

JOSEPH W. TESTA,
TAX COMMISSIONER OF OHIO

Appellee.

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: Case No. 2014-0513
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: Appeal from Ohio Board of Tax Appeals
: Case No. 2013-1010
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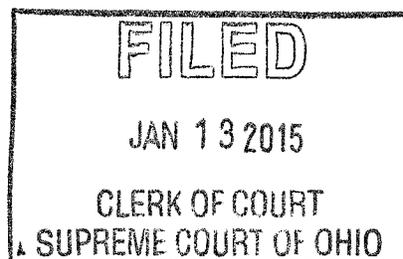
APPELLEE TAX COMMISSIONER'S LIST OF ADDITIONAL AUTHORITIES

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Pursuant to Rule 17.08 of the Supreme Court of Ohio Rules of Practice, appellant, Joseph W. Testa, Tax Commissioner of Ohio, hereby gives notice of the following additional authority upon which he will rely in presenting oral argument before the Court: Ohio Revised Code Section 5739.17, and Ohio Adm. Code 5703-9-01 ("Vendor's License Requirements"). For the Court's convenience, copies of the current version of R.C. 5739.17 (as amended effective September 6, 2012) and the immediately preceding version of R.C.5739.17 (as amended pursuant to 2006 H.B. 66, effective July 5, 2005) are attached. Additionally, a copy of Ohio Adm. Code 5703-09-10 is attached hereto.

Respectfully submitted,

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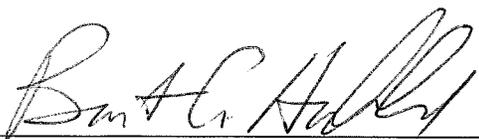
Joseph W. Testa, Tax Commissioner of Ohio

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appellee Tax Commissioner's was served upon the following by U.S. regular mail on this 13th day of January, 2015:

John Wood, Esq.
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Counsel for Appellant
Susan Cruz



BARTON A. HUBBARD

Tax Rules: Final: 5703-9

5703-9-01 - Vendor's license requirements

(A) A vendor engaged in making retail sales subject to the Sales Tax at a fixed place of business must obtain a license therefor and, in case such vendor makes retail sales from vehicles operated by his agents, such sales in the county in which the fixed place of business is located may be made under the license issued for the fixed place of business.

A license for a fixed place of business will not permit the vendor, or employees of the vendor, to operate vehicles in any other county in the State without securing additional licenses. A vendor who makes retail sales from vehicles in more than one county must obtain a license for each county in which he makes such sales.

A license obtained by a vendor for a fixed place of business does not cover retail sales of property purchased from the vendor having the license and resold from vehicles where the operators of such vehicles are not the agents of the vendor having the license but are making the sales for their own profit and in connection with their own business.

A person who does not have a stock of merchandise from which orders are filled, selling on a commission basis for a vendor who has a fixed place of business is not required to procure a vendor's license as he is in fact the agent for the vendor with the license.

Persons selling on a straight commission basis, who sell from a stock of goods which they carry with them, are vendors and will be required to procure a vendor's license and collect the tax in the regular manner.

(B) Vendors having no fixed place of business and selling from vehicles must procure a vendor's license for each vehicle, which vehicle shall constitute his place of business. Such license shall cover all sales made from the one vehicle only in one county. If sales are made from the vehicle in more than one county, licenses shall be procured in each county in which sales are made. The application for each license must set forth a residence or permanent mailing address in the state to which all communications from the Department of Taxation may be sent. A change in this address must be reported promptly to the Department.

Vendors having no fixed place of business and not selling from a vehicle shall procure one license in each county in the state in which sales are made. The application for each license must set forth a residence or permanent mailing address in this state to which all communications from the Department of Taxation may be sent. A change in this address must be reported promptly to the Department.

(C) In those cases where an individual incorporates his business a new license will be required. Likewise, where a corporation is dissolved and is operated by a sole owner, a new license is required. In the case of a dissolution of a partnership by death, the surviving partner or partners may operate under the existing license for sixty days only, at the expiration of which time a new license must be procured for the operation of the business. Trustees in bankruptcy, legal representatives of deceased persons and receivers, when appointed by competent authority, may operate indefinitely under the existing license but must immediately notify the Department of Taxation of their appointment.

A vendor's license shall terminate and be null and void if the business is moved to a new location or if the business is sold, or if an individual or partnership incorporates his or their business, or if a partnership is dissolved, or if a corporation dissolves.

Corporations upon making application for a vendor's license must display their corporation charter number, as registered with the Secretary of State, immediately following their name on the application for license.

If the applicant for a vendor's license is a holder of Liquor Permit issued by the Ohio Department of Liquor Control such vendor's license must conform with Liquor Permit in name and address so as to establish the identity of the actual owner.

In the case of two or more persons constituting a single vendor who operates a single retail establishment under one license, the Department of Taxation must be promptly notified of the retirement of any such person from business in such establishment or the entrance of any person under an existing arrangement.

(D) Hotels, which includes all establishments having five or more rooms which are used or offered for use as sleeping accommodations for transient guests, must hold a vendor's license for the location in which the business is conducted.

(E) No license need be procured by public and parochial schools where the only sales consist of serving meals in cafeterias and selling school supplies to students, not as a business and at no profit.

Effective: 9-28-76 as TX-11-01

Promulgated under: 5703.14

Prior effective dates: 10-12-69

R.C. § 5739.17 (as in effect as of September 6, 2012)

**5739.17 Retail sales; license; application; fee; transient vendors;
registration system for vendor's license**

(A) No person shall engage in making retail sales subject to a tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 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.

(B) 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 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. If a vendor fails to notify the commissioner of a change of location of its fixed place of business or that its business has closed, the commissioner may cancel the vendor's license if ordinary mail sent to the location shown on the license is returned because of an undeliverable address.

(C) The 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.

(D) As used in this section, "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.

(E) Any 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 vendor.

(F) No owner, organizer, or promoter who operates a fair, flea market, show, exhibition, convention, or similar event at which transient vendors are present shall fail to 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 commissioner.

(G) The commissioner may issue additional types of licenses if required to efficiently administer the tax imposed by this chapter.

CREDIT(S)

(2012 H 508, eff. 9-6-12; 2005 H 66, eff. 7-1-05; 2004 S 218, eff. 4-29-05; 2003 H 95, eff. 9-26-03; 2002 S 200, eff. 9-6-02; 2000 H 612, eff. 9-29-00; 1997 H 215, eff. 9-29-97; 1992 H 791, eff. 3-15-93; 1987 H 171; 1986 S 247, H 583; 1983 H 291; 1982 S 530; 1981 H 552, H 694; 1974 S 544; 132 v H 919; 128 v 421; 1953 H 1; GC 5546-10)

Former R.C. 5739.17 as amended pursuant to 2006 H.B. 66 effective July 1, 2005

(A) No person shall engage in making retail sales subject to a tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 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.