As Introduced

133rd General Assembly
Regular Session
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H. B. No. 419
Representative Swearingen
Cosponsors: Representatives Lang, Riedel

A BILL

To amend section 5741.02 of the Revised Code to exempt the seasonal storage or use of certain watercraft purchased outside Ohio from state and local use taxes.

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

Section 1. That section 5741.02 of the Revised Code be amended to read as follows:

Sec. 5741.02. (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 of the Revised Code. The rate of the tax shall be five and three-fourths 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, 5741.022, or 5741.023 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, 5741.022, or 5741.023 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 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)(9) of this section, "charitable purposes" has the same meaning as in division (B)(12) of section 5739.02 of the Revised Code.

(10) Equipment stored, used, or otherwise consumed in this state by an out-of-state disaster business during a disaster response period during which the business conducts disaster work
pursuant to a qualifying solicitation received by the business, provided the equipment is removed from the state before the last day of that period. All terms used in division (C)(10) of this section have the same meanings as in section 5703.94 of the Revised Code.

(11) Watercraft purchased outside this state if all of the following apply:

(a) The watercraft is in this state only for storage and maintenance purposes.

(b) The watercraft is not used or stored in this state between the first day of May and the last day of September of any year.

(c) The watercraft is not required to be registered in this state under section 1547.54 of the Revised Code.

(d) The owner paid taxes to another jurisdiction on the sale, storage, use, or consumption of the watercraft. As used in this division "taxes paid to another jurisdiction" has the same meaning as in division (C)(5) of this section.

(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.
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 of the Revised Code, if the
item purchased is tangible personal property, other than
(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 or 5741.023
of the Revised Code and of transit authorities levying an
additional use tax pursuant to section 5741.022 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 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.

Section 2. That existing section 5741.02 of the Revised
Code is hereby repealed.

Section 3. The amendment by this act of section 5741.02 of
the Revised Code applies beginning on the first day of the first
month beginning on or after the effective date of this act.

Section 4. Pursuant to division (G) of section 5703.95 of
the Revised Code, which states that any bill introduced in the
House of Representatives or the Senate that proposes to enact or
modify one or more tax expenditures should include a statement
explaining the objectives of the tax expenditure or its
modification and the sponsor's intent in proposing the tax
expenditure or its modification:

The objective of this act is to increase business to
Ohio's marine industry by removing a disincentive for out-of-
state boat owners from coming into Ohio with their business.

Currently, subjecting boats to use taxes on the value of
the boat has resulted in out-of-state boats going elsewhere for
winter storage, repair, and refitting work. The charge for
winter storage notwithstanding, most winter work orders from
customers are estimated to range from fifteen thousand dollars
to one-hundred thousand dollars. The loss of even one major job,
ever mind several, could mean the success or failure of a
marine business.

The state of Ohio also suffers significant losses.
Virtually everything related to winter storage and work is
subject to sales tax, including parts, materials, labor, and
storage. When a boat is not winter-stored in Ohio, there are not
only no related sales taxes collected, but also no commercial
activity taxes and no income taxes.