

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 232

Representatives Grossman, Scherer

Cosponsors: Representatives Ryan, Burkley, Reineke, Hackett, Sheehy

A BILL

To amend sections 5741.01 and 5741.17 of the
Revised Code to prescribe new criteria for
determining whether sellers are presumed to have
substantial nexus with Ohio and therefore
required to register to collect use tax, to
allow sellers presumed to have substantial nexus
to rebut that presumption, and to require a
person, before the person enters into a sale of
goods contract with the state, to register,
along with the person's affiliates, to collect
use tax.

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

Section 1. That sections 5741.01 and 5741.17 of the
Revised Code be amended to read as follows:

Sec. 5741.01. 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, business trusts, governments, and

combinations of individuals of any form. 19

(B) "Storage" means and includes any keeping or retention 20
in this state for use or other consumption in this state. 21

(C) "Use" means and includes the exercise of any right or 22
power incidental to the ownership of the thing used. A thing is 23
also "used" in this state if its consumer gives or otherwise 24
distributes it, without charge, to recipients in this state. 25

(D) "Purchase" means acquired or received for a 26
consideration, whether such acquisition or receipt was effected 27
by a transfer of title, or of possession, or of both, or a 28
license to use or consume; whether such transfer was absolute or 29
conditional, and by whatever means the transfer was effected; 30
and whether the consideration was money, credit, barter, or 31
exchange. Purchase includes production, even though the article 32
produced was used, stored, or consumed by the producer. The 33
transfer of copyrighted motion picture films for exhibition 34
purposes is not a purchase, except such films as are used solely 35
for advertising purposes. 36

(E) "Seller" means the person from whom a purchase is 37
made, and includes every person engaged in this state or 38
elsewhere in the business of selling tangible personal property 39
or providing a service for storage, use, or other consumption or 40
benefit in this state; and when, in the opinion of the tax 41
commissioner, it is necessary for the efficient administration 42
of this chapter, to regard any salesperson, representative, 43
peddler, or canvasser as the agent of a dealer, distributor, 44
supervisor, or employer under whom the person operates, or from 45
whom the person obtains tangible personal property, sold by the 46
person for storage, use, or other consumption in this state, 47
irrespective of whether or not the person is making such sales 48

on the person's own behalf, or on behalf of such dealer, 49
distributor, supervisor, or employer, the commissioner may 50
regard the person as such agent, and may regard such dealer, 51
distributor, supervisor, or employer as the seller. "Seller" 52
does not include any person to the extent the person provides a 53
communications medium, such as, but not limited to, newspapers, 54
magazines, radio, television, or cable television, by means of 55
which sellers solicit purchases of their goods or services. 56

(F) "Consumer" means any person who has purchased tangible 57
personal property or has been provided a service for storage, 58
use, or other consumption or benefit in this state. "Consumer" 59
does not include a person who receives, without charge, tangible 60
personal property or a service. 61

A person who performs a facility management or similar 62
service contract for a contractee is a consumer of all tangible 63
personal property and services purchased for use in connection 64
with the performance of such contract, regardless of whether 65
title to any such property vests in the contractee. The purchase 66
of such property and services is not subject to the exception 67
for resale under division (E) of section 5739.01 of the Revised 68
Code. 69

(G) (1) "Price," except as provided in divisions (G) (2) to 70
(6) of this section, has the same meaning as in division (H) (1) 71
of section 5739.01 of the Revised Code. 72

(2) In the case of watercraft, outboard motors, or new 73
motor vehicles, "price" has the same meaning as in divisions (H) 74
(2) and (3) of section 5739.01 of the Revised Code. 75

(3) In the case of a nonresident business consumer that 76
purchases and uses tangible personal property outside this state 77

and subsequently temporarily stores, uses, or otherwise consumes 78
such tangible personal property in the conduct of business in 79
this state, the consumer or the tax commissioner may determine 80
the price based on the value of the temporary storage, use, or 81
other consumption, in lieu of determining the price pursuant to 82
division (G)(1) of this section. A price determination made by 83
the consumer is subject to review and redetermination by the 84
commissioner. 85

(4) In the case of tangible personal property held in this 86
state as inventory for sale or lease, and that is temporarily 87
stored, used, or otherwise consumed in a taxable manner, the 88
price is the value of the temporary use. A price determination 89
made by the consumer is subject to review and redetermination by 90
the commissioner. 91

(5) In the case of tangible personal property originally 92
purchased and used by the consumer outside this state, and that 93
becomes permanently stored, used, or otherwise consumed in this 94
state more than six months after its acquisition by the 95
consumer, the consumer or the commissioner may determine the 96
price based on the current value of such tangible personal 97
property, in lieu of determining the price pursuant to division 98
(G)(1) of this section. A price determination made by the 99
consumer is subject to review and redetermination by the 100
commissioner. 101

(6) If a consumer produces tangible personal property for 102
sale and removes that property from inventory for the consumer's 103
own use, the price is the produced cost of that tangible 104
personal property. 105

(H) "Nexus with this state" means that the seller engages 106
in continuous and widespread solicitation of purchases from 107

residents of this state or otherwise purposefully directs its 108
business activities at residents of this state. 109

(I) (1) "Substantial nexus with this state" means that the 110
seller has sufficient contact with this state, in accordance 111
with Section 8 of Article I of the Constitution of the United 112
States, to allow the state to require the seller to collect and 113
remit use tax on sales of tangible personal property or services 114
made to consumers in this state. ~~"Substantial"~~ 115

(2) "Substantial nexus with this state" exists is presumed 116
to exist when the seller does any of the following: 117

~~(1) Maintains a~~ (a) Uses an office, distribution facility, 118
warehouse, storage facility, or similar place of business within 119
this state, whether operated by ~~employees or agents of the~~ 120
seller, ~~by a member of an affiliated group, as defined in~~ 121
~~division (B) (3) (c) of section 5739.01 of the Revised Code, of~~ 122
~~which the seller is a member, or by a franchisee using a trade~~ 123
~~name of the seller;~~ 124

~~(2) or any other person, other than a common carrier~~ 125
acting in its capacity as a common carrier. 126

(b) Regularly has uses employees, agents, representatives, 127
solicitors, installers, ~~repairmen~~ repairers, 128
~~salesmen~~ salespersons, or other ~~individuals~~ persons in this state 129
(i) for the purpose of conducting the business of the seller, 130
or that (ii) engage in a business with the same or a similar 131
industry classification as the seller selling a similar product 132
or line of products as the seller, or (iii) use trademarks, 133
service marks, or trade names in this state that are the same or 134
substantially similar to those used by the seller. 135

~~(3) (c) Uses a~~ any person, other than a common carrier 136

acting in its capacity as a common carrier, in this state for 137
any of the purpose of receiving following purposes: 138

(i) Receiving or processing orders of the seller's goods 139
or services; 140

(ii) Using that person's employees or facilities in this 141
state to advertise, promote, or facilitate sales by the seller 142
to customers; 143

(iii) Delivering, installing, assembling, or performing 144
maintenance services for the seller's customers; 145

(iv) Facilitating the seller's delivery of tangible 146
personal property to customers in this state by allowing the 147
seller's customers to pick up property sold by the seller at an 148
office, distribution facility, warehouse, storage facility, or 149
similar place of business. 150

~~(4)(d)~~ Makes regular deliveries of tangible personal 151
property into this state by means other than common carrier~~+~~. 152

~~(5)(e)~~ Has membership in an affiliated group, as described 153
~~in division (B) (3) (e) of section 5739.01 of the Revised Code, at~~ 154
~~least one other member of which person that~~ has substantial 155
nexus with this state~~+~~. 156

~~(6)(f)~~ Owns tangible personal property that is rented or 157
leased to a consumer in this state, or offers tangible personal 158
property, on approval, to consumers in this state~~+~~ 159

~~(7)~~ Except as provided in section 5703.65 of the Revised 160
Code, is registered with the secretary of state to do business 161
~~in this state or is registered or licensed by any state agency,~~ 162
~~board, or commission to transact business in this state or to~~ 163
~~make sales to persons in this state;~~ 164

~~(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.~~ 165
166
167
168

(g) Enters into an agreement with one or more residents of
this state under which the resident, for a commission or other
consideration, directly or indirectly refers potential customers
to the seller, whether by a link on a web site, an in-person
oral presentation, telemarketing, or otherwise, provided the
cumulative gross receipts from sales to consumers referred to
the seller by all such residents exceeded ten thousand dollars
during the preceding twelve months. 169
170
171
172
173
174
175
176

(3) A seller presumed to have substantial nexus with this
state under divisions (I) (2) (a) to (f) of this section may rebut
that presumption by demonstrating that activities described in
any of those divisions that are conducted by a person in this
state on the seller's behalf are not significantly associated
with the seller's ability to establish or maintain a market in
this state for the seller's sales. 177
178
179
180
181
182
183

(4) A seller presumed to have substantial nexus with this
state under division (I) (2) (g) of this section may rebut that
presumption by submitting proof that each resident engaged by
the seller as described in that division did not engage in any
activity within this state during the preceding twelve months
that was significantly associated with the seller's ability to
establish or maintain the seller's market in this state during
the preceding twelve months. Such proof may consist of sworn
written statements from all the residents with whom the seller
has an agreement stating that the resident did not engage in any
solicitation in this state on behalf of the seller during the 184
185
186
187
188
189
190
191
192
193
194

preceding twelve months if such statements are provided and 195
obtained in good faith. 196

(5) A seller that does not have substantial nexus with 197
this state, and any affiliated person of the seller, before 198
selling or leasing tangible personal property or services to a 199
state agency, shall register with the tax commissioner in the 200
same manner as a seller described in division (A)(1) of section 201
5741.17 of the Revised Code. 202

(6) As used in division (I) of this section: 203

(a) "Affiliated person" means any person that is a member 204
of the same controlled group of corporations as the seller, or 205
any other person that, notwithstanding the form of organization, 206
bears the same ownership relationship to the seller as a 207
corporation that is a member of the same controlled group of 208
corporations. 209

(b) "Controlled group of corporations" has the same 210
meaning as in section 1563(a) of the Internal Revenue Code. 211

(c) "State agency" has the same meaning as in section 1.60 212
of the Revised Code. 213

(J) "Fiscal officer" means, with respect to a regional 214
transit authority, the secretary-treasurer thereof, and with 215
respect to a county which is a transit authority, the fiscal 216
officer of the county transit board appointed pursuant to 217
section 306.03 of the Revised Code or, if the board of county 218
commissioners operates the county transit system, the county 219
auditor. 220

(K) "Territory of the transit authority" means all of the 221
area included within the territorial boundaries of a transit 222
authority as they from time to time exist. Such territorial 223

boundaries must at all times include all the area of a single 224
county or all the area of the most populous county which is a 225
part of such transit authority. County population shall be 226
measured by the most recent census taken by the United States 227
census bureau. 228

(L) "Transit authority" means a regional transit authority 229
created pursuant to section 306.31 of the Revised Code or a 230
county in which a county transit system is created pursuant to 231
section 306.01 of the Revised Code. For the purposes of this 232
chapter, a transit authority must extend to at least the entire 233
area of a single county. A transit authority which includes 234
territory in more than one county must include all the area of 235
the most populous county which is a part of such transit 236
authority. County population shall be measured by the most 237
recent census taken by the United States census bureau. 238

(M) "Providing a service" has the same meaning as in 239
~~division (X) of~~ section 5739.01 of the Revised Code. 240

(N) "Other consumption" includes receiving the benefits of 241
a service. 242

(O) "Lease" or "rental" has the same meaning as in 243
~~division (UU) of~~ section 5739.01 of the Revised Code. 244

(P) "Certified service provider" has the same meaning as 245
in section 5740.01 of the Revised Code. 246

(Q) "Remote sale" means a sale for which the seller could 247
not be legally required to pay, collect, or remit a tax imposed 248
under this chapter or Chapter 5739. of the Revised Code, unless 249
otherwise provided by the laws of the United States. 250

(R) "Remote seller" means a seller that makes remote sales 251
to one or more consumers. 252

(S) "Remote small seller" means a remote seller that has 253
gross annual receipts from remote sales in the United States not 254
exceeding one million dollars for the preceding calendar year. 255
For the purposes of determining whether a person is a small 256
remote seller, the sales of all persons related within the 257
meaning of subsection (b) or (c) of section 267 or section 258
707(b)(1) of the Internal Revenue Code shall be aggregated, and 259
persons with one or more ownership relationships shall be 260
aggregated if those relationships were designed with the 261
principal purpose to qualify as a remote small seller. 262

Sec. 5741.17. (A) (1) Except as otherwise provided in 263
divisions (A) (2), (3), and (4) of this section, every seller of 264
tangible personal property or services who has substantial nexus 265
with this state shall register with the tax commissioner and 266
supply any information concerning the seller's contacts with 267
this state that may be required by the commissioner. 268

(2) A seller who is licensed as a vendor pursuant to 269
section 5739.17 of the Revised Code shall not be required to 270
register with the commissioner pursuant to this section if all 271
sales to consumers in this state are made under the authority of 272
the seller's vendor's license. 273

(3) A-Unless the seller has substantial nexus with this 274
state pursuant to division (I) (2) (g) of section 5741.01 of the 275
Revised Code, a seller is not required to register under this 276
section if the seller has no contact with this state other than 277
an agency relationship with a person engaged in the business of 278
telemarketing in this state and engaged by the seller 279
exclusively for the purpose of solicitation of customers in 280
other states. 281

(4) A seller is not required to register under this 282

section if the seller has no contact with this state other than 283
the ownership of property that is located at the facility of a 284
printer with which the seller has contracted for printing and 285
that consists of the final printed product, property that 286
becomes a part of the final printed product, or copy from which 287
the final printed product is produced. 288

(B) A seller who does not have substantial nexus with this 289
state may voluntarily register with the commissioner. A seller 290
who voluntarily registers with the commissioner under this 291
section is entitled to the same benefits and is subject to the 292
same duties and requirements as a seller required to be 293
registered with the commissioner under this chapter. 294

The commissioner shall maintain an alphabetical index of 295
all sellers registered under this chapter and records of the use 296
tax reported and paid. Upon request, this information shall be 297
made available to the treasurer of state. 298

(C) A remote small seller is not required to register 299
under this section. 300

Section 2. That existing sections 5741.01 and 5741.17 of 301
the Revised Code are hereby repealed. 302

Section 3. The amendment by this act of sections 5741.01 303
and 5741.17 of the Revised Code applies to the storage, use, or 304
consumption of tangible personal property or services occurring 305
on and after July 1, 2015. 306