

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 545**

**Representative Arndt**

**Cosponsors: Representatives Romanchuk, Schaffer, Riedel, Becker, Hood, Lang,  
Scherer, Hambley, Patmon**

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**A BILL**

To amend sections 5739.03 and 5739.121 of the 1  
Revised Code to authorize small retailers to 2  
remit sales taxes when the retailer receives 3  
payment from the purchaser if the payment is 4  
received after the purchased item is delivered 5  
or the service is provided. 6

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

**Section 1.** That sections 5739.03 and 5739.121 of the 7  
Revised Code be amended to read as follows: 8

**Sec. 5739.03.** (A) Except as provided in section 5739.05 or 9  
section 5739.051 of the Revised Code, the tax imposed by or 10  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 11  
the Revised Code shall be paid by the consumer to the vendor, 12  
and each vendor shall collect from the consumer, as a trustee 13  
for the state of Ohio, the full and exact amount of the tax 14  
payable on each taxable sale, in the manner and at the times 15  
provided as follows: 16

(1) If the price is, at or prior to the provision of the 17

service or the delivery of possession of the thing sold to the 18  
consumer, paid in currency passed from hand to hand by the 19  
consumer or the consumer's agent to the vendor or the vendor's 20  
agent, the vendor or the vendor's agent shall collect the tax 21  
with and at the same time as the price; 22

(2) If the price is otherwise paid or to be paid, the 23  
vendor or the vendor's agent shall, at or prior to the provision 24  
of the service or the delivery of possession of the thing sold 25  
to the consumer, charge the tax imposed by or pursuant to 26  
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 27  
Code to the account of the consumer, which amount shall be 28  
collected by the vendor from the consumer in addition to the 29  
price. ~~Such~~ The amount of the tax shall become a legal charge in 30  
favor of the vendor and against the consumer. Except as 31  
authorized in division (G) (1) of this section, such a sale shall 32  
be reported on and the amount of the tax applicable thereto 33  
shall be remitted with the return for the period in which the 34  
sale is made, ~~and the amount of the tax shall become a legal~~ 35  
~~charge in favor of the vendor and against the consumer.~~ 36

(B) (1) (a) If any sale is claimed to be exempt under 37  
division (E) of section 5739.01 of the Revised Code or under 38  
section 5739.02 of the Revised Code, with the exception of 39  
divisions (B) (1) to (11) or (28) of section 5739.02 of the 40  
Revised Code, or if the consumer claims the transaction is not a 41  
taxable sale due to one or more of the exclusions provided under 42  
divisions (JJ) (1) to (5) of section 5739.01 of the Revised Code, 43  
the consumer must provide to the vendor, and the vendor must 44  
obtain from the consumer, a certificate specifying the reason 45  
that the sale is not legally subject to the tax. The certificate 46  
shall be in such form, and shall be provided either in a hard 47  
copy form or electronic form, as the tax commissioner 48

prescribes. 49

(b) A vendor that obtains a fully completed exemption 50  
certificate from a consumer is relieved of liability for 51  
collecting and remitting tax on any sale covered by that 52  
certificate. If it is determined the exemption was improperly 53  
claimed, the consumer shall be liable for any tax due on that 54  
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 55  
Chapter 5741. of the Revised Code. Relief under this division 56  
from liability does not apply to any of the following: 57

(i) A vendor that fraudulently fails to collect tax; 58

(ii) A vendor that solicits consumers to participate in 59  
the unlawful claim of an exemption; 60

(iii) A vendor that accepts an exemption certificate from 61  
a consumer that claims an exemption based on who purchases or 62  
who sells property or a service, when the subject of the 63  
transaction sought to be covered by the exemption certificate is 64  
actually received by the consumer at a location operated by the 65  
vendor in this state, and this state has posted to its web site 66  
an exemption certificate form that clearly and affirmatively 67  
indicates that the claimed exemption is not available in this 68  
state; 69

(iv) A vendor that accepts an exemption certificate from a 70  
consumer who claims a multiple points of use exemption under 71  
division (D) of section 5739.033 of the Revised Code, if the 72  
item purchased is tangible personal property, other than 73  
prewritten computer software. 74

(2) The vendor shall maintain records, including exemption 75  
certificates, of all sales on which a consumer has claimed an 76  
exemption, and provide them to the tax commissioner on request. 77

(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. 108

(C) As used in this division, "contractee" means a person 109  
who seeks to enter or enters into a contract or agreement with a 110  
contractor or vendor for the construction of real property or 111  
for the sale and installation onto real property of tangible 112  
personal property. 113

Any contractor or vendor may request from any contractee a 114  
certification of what portion of the property to be transferred 115  
under such contract or agreement is to be incorporated into the 116  
realty and what portion will retain its status as tangible 117  
personal property after installation is completed. The 118  
contractor or vendor shall request the certification by 119  
certified mail delivered to the contractee, return receipt 120  
requested. Upon receipt of such request and prior to entering 121  
into the contract or agreement, the contractee shall provide to 122  
the contractor or vendor a certification sufficiently detailed 123  
to enable the contractor or vendor to ascertain the resulting 124  
classification of all materials purchased or fabricated by the 125  
contractor or vendor and transferred to the contractee. This 126  
requirement applies to a contractee regardless of whether the 127  
contractee holds a direct payment permit under section 5739.031 128  
of the Revised Code or provides to the contractor or vendor an 129  
exemption certificate as provided under this section. 130

For the purposes of the taxes levied by this chapter and 131  
Chapter 5741. of the Revised Code, the contractor or vendor may 132  
in good faith rely on the contractee's certification. 133  
Notwithstanding division (B) of section 5739.01 of the Revised 134  
Code, if the tax commissioner determines that certain property 135  
certified by the contractee as tangible personal property 136  
pursuant to this division is, in fact, real property, the 137

contractee shall be considered to be the consumer of all 138  
materials so incorporated into that real property and shall be 139  
liable for the applicable tax, and the contractor or vendor 140  
shall be excused from any liability on those materials. 141

If a contractee fails to provide such certification upon 142  
the request of the contractor or vendor, the contractor or 143  
vendor shall comply with the provisions of this chapter and 144  
Chapter 5741. of the Revised Code without the certification. If 145  
the tax commissioner determines that such compliance has been 146  
performed in good faith and that certain property treated as 147  
tangible personal property by the contractor or vendor is, in 148  
fact, real property, the contractee shall be considered to be 149  
the consumer of all materials so incorporated into that real 150  
property and shall be liable for the applicable tax, and the 151  
construction contractor or vendor shall be excused from any 152  
liability on those materials. 153

This division does not apply to any contract or agreement 154  
where the tax commissioner determines as a fact that a 155  
certification under this division was made solely on the 156  
decision or advice of the contractor or vendor. 157

(D) Notwithstanding division (B) of section 5739.01 of the 158  
Revised Code, whenever the total rate of tax imposed under this 159  
chapter is increased after the date after a construction 160  
contract is entered into, the contractee shall reimburse the 161  
construction contractor for any additional tax paid on tangible 162  
property consumed or services received pursuant to the contract. 163

(E) A vendor who files a petition for reassessment 164  
contesting the assessment of tax on sales for which the vendor 165  
obtained no valid exemption certificates and for which the 166  
vendor failed to establish that the sales were properly not 167

subject to the tax during the one-hundred-twenty-day period 168  
allowed under division (B) of this section, may present to the 169  
tax commissioner additional evidence to prove that the sales 170  
were properly subject to a claim of exception or exemption. The 171  
vendor shall file such evidence within ninety days of the 172  
receipt by the vendor of the notice of assessment, except that, 173  
upon application and for reasonable cause, the period for 174  
submitting such evidence shall be extended thirty days. 175

The commissioner shall consider such additional evidence 176  
in reaching the final determination on the assessment and 177  
petition for reassessment. 178

(F) Whenever a vendor refunds the price, minus any 179  
separately stated delivery charge, of an item of tangible 180  
personal property on which the tax imposed under this chapter 181  
has been paid, the vendor shall also refund the amount of tax 182  
paid, minus the amount of tax attributable to the delivery 183  
charge. 184

(G) (1) In lieu of reporting and remitting tax as 185  
prescribed by division (A) (2) of this section for sales 186  
described in that division, a vendor that is a qualifying small 187  
vendor for a calendar year may, for such sales made on or after 188  
the first day of the following calendar year, report and remit 189  
such taxes on the return for the vendor's reporting period that 190  
includes the day the vendor or vendor's agent receives payment 191  
of the price from the consumer. If, after such a sale is made, 192  
the consumer pays only part of the price in a reporting period, 193  
the vendor shall report and remit the tax for the part of the 194  
price paid in that reporting period. A qualifying small vendor 195  
reporting and remitting tax under division (G) (1) of this 196  
section remains subject to collection requirements prescribed in 197

division (A) (2) of section 5739.02 of the Revised Code and to 198  
the requirement to remit tax on an accelerated basis as 199  
prescribed in section 5739.122 of the Revised Code, as 200  
applicable to the vendor. 201

(2) A qualifying small vendor reporting and remitting tax 202  
as prescribed by division (G) (1) of this section may begin 203  
reporting and remitting tax as prescribed by division (A) (2) of 204  
this section for sales described in that division made on or 205  
after the first day of a calendar year. Such a vendor shall 206  
report and remit, with the vendor's return for the last 207  
reporting period in the preceding calendar year, the amount of 208  
any tax charged on sales described in division (A) (2) of this 209  
section made in preceding calendar years, but not yet remitted 210  
as prescribed by that division, except for any tax charged on 211  
bad debt reported under division (G) of section 5739.121 of the 212  
Revised Code. 213

(3) A vendor reporting and remitting tax as prescribed by 214  
division (G) (1) of this section that ceases to qualify as a 215  
qualifying small vendor for a calendar year shall begin 216  
reporting and remitting tax as prescribed by division (A) (2) of 217  
this section for sales described in that division that are made 218  
on or after the first day of the following calendar year. Such a 219  
vendor shall report and remit, with the vendor's return for the 220  
last reporting period in the preceding calendar year, the amount 221  
of any tax charged on sales described in division (A) (2) of this 222  
section made in preceding calendar years, but not yet remitted 223  
as prescribed by that division, except for any tax charged on 224  
bad debt reported under division (G) of section 5739.121 of the 225  
Revised Code. 226

(4) As used in division (G) of this section, "qualifying 227

small vendor" means a vendor that (a) has gross sales of less 228  
than one million dollars in a calendar year and (b) qualifies as 229  
a microbusiness, as that term is defined in section 166.50 of 230  
the Revised Code, for at least seven months of a calendar year. 231

**Sec. 5739.121.** (A) As used in this section, "bad debt" 232  
means any debt that has become worthless or uncollectible in the 233  
time period between a vendor's preceding return and the present 234  
return, has been uncollected for at least six months, and that 235  
may be claimed as a deduction pursuant to the "Internal Revenue 236  
Code of 1954," 68A Stat. 50, 26 U.S.C. 166, as amended, and 237  
regulations adopted pursuant thereto, or that could be claimed 238  
as such a deduction if the vendor kept accounts on an accrual 239  
basis. "Bad debt" does not include any interest or sales tax on 240  
the purchase price, uncollectible amounts on property that 241  
remains in the possession of the vendor until the full purchase 242  
price is paid, expenses incurred in attempting to collect any 243  
account receivable or for any portion of the debt recovered, and 244  
repossessed property. 245

(B) In computing taxable receipts for purposes of this 246  
chapter, a vendor may deduct the amount of bad debts. The amount 247  
deducted must be charged off as uncollectible on the books of 248  
the vendor. A deduction may be claimed only with respect to bad 249  
debts on which the taxes pursuant to sections 5739.10 and 250  
5739.12 of the Revised Code were paid in a preceding tax period. 251  
If the vendor's business consists of taxable and nontaxable 252  
transactions, the deduction shall equal the full amount of the 253  
debt if the debt is documented as a taxable transaction in the 254  
vendor's records. If no such documentation is available, the 255  
maximum deduction on any bad debt shall equal the amount of the 256  
bad debt multiplied by the quotient obtained by dividing the 257  
sales taxed pursuant to this chapter during the preceding 258

calendar year by all sales during the preceding calendar year, 259  
whether taxed or not. If a consumer or other person pays all or 260  
part of a bad debt with respect to which a vendor claimed a 261  
deduction under this section, the vendor shall be liable for the 262  
amount of taxes deducted in connection with that portion of the 263  
debt for which payment is received and shall remit such taxes in 264  
the vendor's next payment to the tax commissioner. 265

(C) Any claim for a bad debt deduction under this section 266  
shall be supported by such evidence as the tax commissioner by 267  
rule requires. The commissioner shall review any change in the 268  
rate of taxation applicable to any taxable sales by a vendor 269  
claiming a deduction pursuant to this section and adopt rules 270  
for altering the deduction in the event of such a change in 271  
order to ensure that the deduction on any bad debt does not 272  
result in the vendor claiming the deduction recovering any more 273  
or less than the taxes imposed on the sale that constitutes the 274  
bad debt. 275

(D) In any reporting period in which the amount of bad 276  
debt exceeds the amount of taxable sales for the period, the 277  
vendor may file a refund claim for any tax collected on the bad 278  
debt in excess of the tax reported on the return. The refund 279  
claim shall be filed in the manner provided in section 5739.07 280  
of the Revised Code, except that the claim may be filed within 281  
four years of the due date of the return on which the bad debt 282  
first could have been claimed. 283

(E) When the filing responsibilities of a vendor have been 284  
assumed by a certified service provider, the certified service 285  
provider shall claim the bad debt allowance provided by this 286  
section on behalf of the vendor. The certified service provider 287  
shall credit or refund to the vendor the full amount of any bad 288

debt allowance or refund.	289
(F) No person other than the vendor in the transaction	290
that generated the bad debt or, as provided in division (E) of	291
this section, a certified service provider, may claim the bad	292
debt allowance provided by this section.	293
<u>(G) A qualifying small vendor that remits tax on sales as</u>	294
<u>prescribed by division (G) (1) of section 5739.03 of the Revised</u>	295
<u>Code shall report all of the following to the tax commissioner:</u>	296
<u>(1) The amount of bad debt from such sales charged off as</u>	297
<u>uncollectible on the books of the vendor upon which the vendor</u>	298
<u>charged tax to the account of the consumer under division (A) (2)</u>	299
<u>of section 5739.03 of the Revised Code;</u>	300
<u>(2) The name and address of the consumer responsible for</u>	301
<u>the bad debt;</u>	302
<u>(3) Any other information required by the commissioner to</u>	303
<u>identify the consumer responsible for the bad debt.</u>	304
<u>The information shall be reported with the vendor's return</u>	305
<u>for the reporting period in which the bad debt described in</u>	306
<u>division (G) (1) of this section is charged off as uncollectible</u>	307
<u>on the books of the vendor.</u>	308
<u>A qualifying small vendor required to report bad debt</u>	309
<u>under this division is not liable for any tax imposed under this</u>	310
<u>chapter on bad debt timely reported under this division. But if</u>	311
<u>a consumer or other person pays all or part of a bad debt so</u>	312
<u>reported, the vendor shall be liable for the amount of such</u>	313
<u>taxes on the portion of the debt for which payment is received</u>	314
<u>and shall report and remit such taxes with the vendor's next</u>	315
<u>return.</u>	316

<b>Section 2.</b> That existing sections 5739.03 and 5739.121 of	317
the Revised Code are hereby repealed.	318
<b>Section 3.</b> The amendment by this act of sections 5739.03	319
and 5739.121 of the Revised Code applies on and after January 1,	320
2020.	321