

As Introduced

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Representative Arndt

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

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

Section 2. That existing sections 5739.03 and 5739.121 of	317
the Revised Code are hereby repealed.	318
Section 3. 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