(125th General Assembly)
(Substitute Senate Bill Number 218)

AN ACT

To amend sections 5703.70, 5739.033, 5739.034, 5739.17, 5740.05, 5740.08, and 5741.05; to enact sections 5739.035, 5739.123, 5739.24, 5740.09, and 5740.10; and to repeal the version of section 5739.033 of the Revised Code that results from Section 1 of Am. Sub. H.B. 95 of the 125th General Assembly and to amend Section 4 of Am. Sub. H.B. 168 of the 125th General Assembly, as amended by Sub. H.B. 204 of the 125th General Assembly; to repeal Section 3.18 of Am. Sub. H.B. 95 of the 125th General Assembly, as most recently amended by Sub. H.B. 127 and Sub. H.B. 204, both of the 125th General Assembly; and to repeal Section 8 of Sub. H.B. 204 of the 125th General Assembly to provide temporary compensation to vendors as they begin to implement destination-based sourcing of their sales, to establish a procedure to compensate impacted counties for sales tax losses incurred under destination-based sourcing, to require the Tax Commissioner to work with states that are implementing the Streamlined Sales and Use Tax Agreement to encourage the adoption of an amendment that allows certain vendors to source sales at the vendor's place of business, and to make changes to the sales tax law and the Interstate Streamlined Sales and Use Tax System law to comply with the Agreement.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5703.70, 5739.033, 5739.034, 5739.17, 5740.05, 5740.08, and 5741.05 be amended and sections 5739.035,

5739.123, 5739.24, 5740.09, and 5740.10 of the Revised Code be enacted to read as follows:

Sec. 5703.70. (A) On the filing of an application for refund under section 3734.905, 4307.05, 4307.07, 5727.28, 5727.91, 5728.061, 5733.12, 5735.122, 5735.13, 5735.14, 5735.141, 5735.142, 5735.18, 5739.07, 5739.071, 5739.104, 5741.10, 5743.05, 5743.53, or 5749.08 of the Revised Code, or an application for compensation under section 5739.123 of the Revised Code, if the tax commissioner determines that the amount of the refund or compensation to which the applicant is entitled is less than the amount claimed in the application, the commissioner shall give the applicant written notice by ordinary mail of the amount. The notice shall be sent to the address shown on the application ~~for a refund~~ unless the applicant notifies the commissioner of a different address. The applicant shall have sixty days from the date the commissioner mails the notice to provide additional information to the commissioner or request a hearing, or both.

(B) If the applicant neither requests a hearing nor provides additional information to the tax commissioner within the time prescribed by division (A) of this section, the commissioner shall take no further action, and the refund amount or compensation amount denied becomes final.

(C)(1) If the applicant requests a hearing within the time prescribed by division (A) of this section, the tax commissioner shall assign a time and place for the hearing and notify the applicant of such time and place, but the commissioner may continue the hearing from time to time as necessary. After the hearing, the commissioner may make such adjustments to the refund or compensation as the commissioner finds proper, and shall issue a final determination thereon.

(2) If the applicant does not request a hearing, but provides additional information, within the time prescribed by division (A) of this section, the commissioner shall review the information, make such adjustments to the refund or compensation as the commissioner finds proper, and issue a final determination thereon.

(3) The commissioner shall serve a copy of the final determination made under division (C)(1) or (2) of this section on the applicant in the manner provided in section 5703.37 of the Revised Code, and the decision is final, subject to appeal under section 5717.02 of the Revised Code.

(D) The tax commissioner shall certify to the director of budget and management and treasurer of state for payment from the tax refund fund created by section 5703.052 of the Revised Code, the amount of the refund to be refunded under division (B) or (C) of this section. The commissioner

also shall certify to the director and treasurer of state for payment from the general revenue fund the amount of compensation to be paid under division (B) or (C) of this section.

Sec. 5739.033. ~~The~~ This section applies to sales made on and after July 1, 2005. Sales made before July 1, 2005, are subject to section 5739.035 of the Revised Code. On and after January 1, 2005, any vendor may irrevocably elect to comply with this section for all of the vendor's sales and places of business in this state.

The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section or, if applicable, under division (C) of section 5739.031 or section 5739.034 or 5739.035 of the Revised Code. This section applies only to a vendor's or seller's obligation to collect and remit sales taxes under section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code or use taxes under section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code. This section does not affect the obligation of a consumer to remit use taxes on the storage, use, or other consumption of tangible personal property or on the benefit realized of any service provided, to the jurisdiction of that storage, use, or consumption, or benefit realized.

(A) Except for sales, other than leases, of titled motor vehicles, titled watercraft, or titled outboard motors as provided in section 5741.05 of the Revised Code, or as otherwise provided in this section and section 5739.034 or 5740.10 of the Revised Code, all sales shall be sourced as follows:

(1) If the consumer or a donee designated by the consumer receives tangible personal property or a service at a vendor's place of business, the sale shall be sourced to that place of business.

(2) When the tangible personal property or service is not received at a vendor's place of business, the sale shall be sourced to the location known to the vendor where the consumer or the donee designated by the consumer receives the tangible personal property or service, including the location indicated by instructions for delivery to the consumer or the consumer's donee.

(3) If divisions (A)(1) and (2) of this section do not apply, the sale shall be sourced to the location indicated by an address for the consumer that is available from the vendor's business records that are maintained in the ordinary course of the vendor's business, when use of that address does not constitute bad faith.

(4) If divisions (A)(1), (2), and (3) of this section do not apply, the sale shall be sourced to the location indicated by an address for the consumer

obtained during the consummation of the sale, including the address associated with the consumer's payment instrument, if no other address is available, when use of that address does not constitute bad faith.

(5) If divisions (A)(1), (2), (3), and (4) of this section do not apply, including in the circumstance where the vendor is without sufficient information to apply any of those divisions, the sale shall be sourced to the address from which tangible personal property was shipped, or from which the service was provided, disregarding any location that merely provided the electronic transfer of the property sold or service provided.

(6) As used in division (A) of this section, "receive" means taking possession of tangible personal property or making first use of a service. "Receive" does not include possession by a shipping company on behalf of a consumer.

(B)(1) Notwithstanding divisions (A)(1) to (5) of this section, a consumer that is not a holder of a direct payment permit granted under section 5739.031 of the Revised Code, that purchases computer software delivered electronically or a service for use in business, and that knows at the time of purchase that such software or service will be concurrently available for use in more than one taxing jurisdiction shall deliver to the vendor in conjunction with its purchase a multiple points of use exemption form prescribed by the tax commissioner disclosing this fact. On receipt of the multiple points of use exemption form, the vendor is relieved of its obligation to collect, pay, or remit the tax due, and the consumer must pay the tax directly to the state.

(2) A consumer that delivers such form to a vendor may use any reasonable, consistent, and uniform method of apportioning the tax due on the computer software delivered electronically or service for use in business that is supported by the consumer's business records as they existed at the time of the sale.

(3) The multiple points of use exemption form shall remain in effect for all future sales by the vendor to the consumer until it is revoked in writing by the consumer, except as to the consumer's specific apportionment of a subsequent sale under division (B)(2) of this section and the facts existing at the time of the sale.

(C) A person who holds a direct payment permit issued under section 5739.031 of the Revised Code is not required to deliver a multiple points of use exemption form to a vendor. But such permit holder shall comply with division (B)(2) of this section in apportioning the tax due on computer software delivered electronically or a service used in business that will be concurrently available for use in more than one taxing jurisdiction.

(D)(1) Notwithstanding divisions (A)(1) to (5) of this section, the purchaser of direct mail that is not a holder of a direct payment permit shall provide to the vendor in conjunction with the purchase either a direct mail form prescribed by the tax commissioner, or information to show the jurisdictions to which the direct mail is delivered to recipients.

(2) Upon receipt of a direct mail form, the vendor is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay that tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the vendor to the purchaser until it is revoked in writing.

(3) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the vendor shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the vendor is relieved of any further obligation to collect tax on any transaction where the vendor has collected tax pursuant to the delivery information provided by the purchaser.

(4) If the purchaser of direct mail does not have a direct payment permit and does not provide the vendor with either a direct mail form or delivery information as required by division (D)(1) of this section, the vendor shall collect the tax according to division (A)(5) of this section. Nothing in division (D)(4) of this section shall limit a purchaser's obligation to pay sales or use tax to any state to which the direct mail is delivered.

(5) If a purchaser of direct mail provides the vendor with documentation of direct payment authority, the purchaser shall not be required to provide a direct mail form or delivery information to the vendor.

(E) If the vendor provides lodging to transient guests as specified in division (B)(2) of section 5739.01 of the Revised Code, the sale shall be sourced to the location where the lodging is located.

(F)(1) As used in this division and division (G) of this section, "transportation equipment" means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(b) Trucks and truck-tractors with a gross vehicle weight rating of greater than ten thousand pounds, trailers, semi-trailers, or passenger buses that are registered through the international registration plan and are operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(c) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal

authority to engage in the carriage of persons or property in interstate or foreign commerce.

(d) Containers designed for use on and component parts attached to or secured on the items set forth in division (F)(1)(a), (b), or (c) of this section.

(2) A sale, lease, or rental of transportation equipment shall be sourced pursuant to division (A) of this section.

(G)(1) A lease or rental of tangible personal property that does not require recurring periodic payments shall be sourced pursuant to division (A) of this section.

(2) A lease or rental of tangible personal property that requires recurring periodic payments shall be sourced as follows:

(a) In the case of a motor vehicle, other than a motor vehicle that is transportation equipment, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the address of the lessee or renter used for titling the motor vehicle pursuant to section 4505.06 of the Revised Code at the time the lease or rental is consummated.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

(b) In the case of an aircraft, other than an aircraft that is transportation equipment, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the primary property location at the time the lease or rental is consummated.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for each lease or rental installment is the primary property location for the period covered by the installment.

(c) In the case of a watercraft or an outboard motor required to be titled in this state pursuant to Chapter 1548. of the Revised Code, such lease or rental shall be sourced to the primary property location as follows:

(i) For a lease or rental taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the primary property location is the address of the lessee or renter shown on the title.

(ii) For a lease or rental taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the primary property location for the initial

lease or rental installment is the address of the lessee or renter shown on the title. For each subsequent installment, the primary property location is the primary property location for the period covered by the installment.

(d) In the case of a lease or rental of all other tangible personal property, other than transportation equipment, such lease or rental shall be sourced as follows:

(i) For a lease or rental that is taxed pursuant to division (A)(2) of section 5739.02 of the Revised Code, the lease or rental shall be sourced pursuant to division (A) of this section at the time the lease or rental is consummated.

(ii) For a lease or rental that is taxed pursuant to division (A)(3) of section 5739.02 of the Revised Code, the initial lease or rental installment shall be sourced pursuant to division (A) of this section. Each subsequent installment shall be sourced to the primary property location for the period covered by the installment.

(3) As used in division (G) of this section, "primary property location" means an address for tangible personal property provided by the lessee or renter that is available to the lessor or owner from its records maintained in the ordinary course of business, when use of that address does not constitute bad faith.

Sec. 5739.034. (A) As used in this section:

(1) "Air-to-ground radiotelephone service" means a radio service, as defined in 47 C.F.R. 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(3) "Customer" means the person or entity that contracts with a seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or of mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(4) "End user" means the person who utilizes the telecommunications service. In the case of a person other than an individual, "end user" means the individual who utilizes the service on behalf of the person.

(5) "Home service provider" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631

(2000), 4 U.S.C. 124(5), as amended.

(6) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(7) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. "Post-paid calling service" includes a telecommunications service that would be a prepaid calling service, but for the fact that it is not exclusively a telecommunications service.

(8) "Prepaid calling service" means the right to access exclusively a telecommunications service that must be paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(9) "Service address" means:

(a) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(b) If the location in division (A)(9)(a) of this section is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) If the locations in divisions (A)(9)(a) and (b) of this section are not known, "service address" means the location of the customer's place of primary use.

(B) The amount of tax due pursuant to sections 5739.02, 5739.021, 5739.023, and 5739.026 of the Revised Code on sales of telecommunications service, information service, or mobile telecommunications service, is the sum of the taxes imposed pursuant to those sections at the sourcing location of the sale as determined under this section.

(C) Except for the telecommunications services described in division

(E) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to each level of taxing jurisdiction where the call originates and terminates in that jurisdiction, or each level of taxing jurisdiction where the call either originates or terminates and in which the service address also is located.

(D) Except for the telecommunications services described in division (E) of this section, a sale of telecommunications services sold on a basis other than a call-by-call basis shall be sourced to the customer's place of primary use.

(E) The sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction, as follows:

(1) A sale of mobile telecommunications service, other than air-to-ground radiotelephone service and prepaid calling service, shall be sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service shall be sourced to the origination point of the telecommunications signal as first identified by the service provider's telecommunications system, or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A ~~sale of prepaid calling service made prior to January 1, 2004, shall be sourced under division (H) of section 5739.033 of the Revised Code. On and after January 1, 2004, a~~ sale of mobile telecommunications service that is a prepaid telecommunications service shall be sourced under division (A)~~(5)~~ of section 5739.033 of the Revised Code, but in lieu of sourcing the sale of the service under division (A)(5) of that section, it may be sourced to the location associated with the mobile telephone number.

Sec. 5739.035. This section only applies to sales that are required to be situsedunder this section pursuant to section 5739.033 of the Revised Code.

(A) Except as otherwise provided in this section, the situs of all sales is the vendor's place of business.

(1) If the consumer or the consumer's agent takes possession of the tangible personal property at a place of business of the vendor where the purchase contract or agreement was made, the situs of the sale is that place of business.

(2) If the consumer or the consumer's agent takes possession of the tangible personal property other than at a place of business of the vendor, or takes possession at a warehouse or similar facility of the vendor, the situs of the sale is the vendor's place of business where the purchase contract or agreement was made or the purchase order was received.

(3) If the vendor provides a service specified in division (B)(3)(a), (b), (c), (d), (n), (o), (r), (s), or (t) of section 5739.01 or makes a sale specified in division (B)(8) of section 5739.01 of the Revised Code, the situs of the sale is the vendor's place of business where the service is performed or the contract or agreement for the service was made or the purchase order was received.

(B) If the vendor is a transient vendor as specified in division (B) of section 5739.17 of the Revised Code, the situs of the sale is the vendor's temporary place of business or, if the transient vendor is the lessor of titled motor vehicles, titled watercraft, or titled outboard motors, at the location where the lessee keeps the leased property.

(C) If the vendor makes sales of tangible personal property from a stock of goods carried in a motor vehicle, from which the purchaser makes selection and takes possession, or from which the vendor sells tangible personal property the quantity of which has not been determined prior to the time the purchaser takes possession, the situs of the sale is the location of the motor vehicle when the sale is made.

(D) If the vendor is a delivery vendor as specified in division (D) of section 5739.17 of the Revised Code, the situs of the sale is the place where the tangible personal property is delivered, where the leased property is used, or where the service is performed or received.

(E) If the vendor provides a service specified in division (B)(3)(e), (g), (h), (j), (k), (l), (m), (q), or (u) of section 5739.01 of the Revised Code, the situs of the sale is the location of the consumer where the service is performed or received.

(F) If the vendor provides lodging to transient guests as specified in division (B)(2) of section 5739.01 of the Revised Code, the situs of the sale is the location where the lodging is located.

(G) If the vendor sells a warranty, maintenance or service contract, or similar agreement as specified in division (B)(7) of section 5739.01 of the Revised Code and the vendor is a delivery vendor, the situs of the sale is the location of the consumer. If the vendor is not a delivery vendor, the situs of the sale is the vendor's place of business where the contract or agreement was made, unless the warranty or contract is a component of the sale of a titled motor vehicle, titled watercraft, or titled outboard motor, in which case the situs of the sale is the county of titling.

(H) Except as otherwise provided in this division, if the vendor sells a prepaid authorization number or a prepaid telephone calling card, the situs of the sale is the vendor's place of business and shall be taxed at the time of sale. If the vendor sells a prepaid authorization number or prepaid telephone

calling card through a telephone call, electronic commerce, or any other form of remote commerce, the situs of the sale is the consumer's shipping address, or, if there is no item shipped, at the consumer's billing address.

Sec. 5739.123. (A) As used in this section, "destination-based sourcing requirements" means the manner in which sales are required to be sourced under section 5739.033 of the Revised Code.

(B) A vendor who holds a license issued prior to July 1, 2005, under division (A) of section 5739.17 of the Revised Code may apply for temporary compensation to assist the vendor in complying with the destination-based sourcing requirements for the first six months those sourcing requirements become applicable to the vendor under section 5739.033 of the Revised Code. The vendor shall file the application in accordance with division (C) of this section. The compensation shall be calculated for each county each month of the six-month period, and shall equal the amount of the tax reported on the return for sales of tangible personal property delivered to each county in which the vendor does not have a fixed place of business and does not, or is not required to, hold a license issued under division (A) of section 5739.17 of the Revised Code for that business, not to exceed twenty-five dollars per county for each month. Only amounts paid by the vendor for which the vendor is eligible for a discount under division (B) of section 5739.12 of the Revised Code and that are shown on returns filed during that six-month period shall be considered in calculating the compensation. In no event shall a vendor receive compensation that exceeds its total cost of complying with the destination-based sourcing requirements. For purposes of the six-month compensation period, a partial month shall be considered a month.

(C) A vendor that applies for compensation under this section shall file an application with the tax commissioner on a form prescribed by the commissioner. The application shall be filed within sixty days after the last day of the last month of the six-month period for which the vendor is requesting compensation. The commissioner shall determine the amount of compensation to which the vendor is entitled, and if that amount is equal to or greater than the amount claimed on the application, the commissioner shall certify that amount to the director of budget and management and the treasurer of state for payment from the general revenue fund. If the commissioner determines that the amount of compensation to which the vendor is entitled is less than the amount claimed on the vendor's application, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(D) The compensation provided under this section shall not reduce the

amount required to be returned to counties and transit authorities under section 5739.21 of the Revised Code.

Sec. 5739.17. (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.

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), (q), or (u) 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), (q), or (u) 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.

Sec. 5739.24. (A) As used in this section:

(1) "Destination-based sourcing requirements" has the same meaning as in section 5739.123 of the Revised Code.

(2) "Impacted county" means a county having a population of less than seventy-five thousand as of the decennial census of 2000 taken by the

United States census bureau.

(3) "Master account holder" means a person that holds more than one vendor's license under division (A) of section 5739.17 of the Revised Code, operates in multiple tax jurisdictions under the same ownership, and files or is required to file a consolidated return under section 5739.12 of the Revised Code.

(4) "Tax jurisdiction" means a county or, if applicable, the portion of a county in which a transit authority has territory.

(B)(1) Within thirty days after the thirtieth day of June and the thirty-first day of December of each year, a master account holder that makes a sale that is subject to the destination-based sourcing requirements shall file with the tax commissioner a report that details the total taxable sales it made for the prior six-month period in each tax jurisdiction and at each fixed place of business for which the master account holder holds or should hold a license, irrespective of where those sales were sourced under those requirements. The commissioner may extend the time for filing the report under this section.

(2) If the report required by division (B)(1) of this section is not timely filed by a master account holder, the tax commissioner shall mail notice of a delinquent report to the holder. In addition to any other penalties or additional charges imposed under this chapter, the commissioner may impose a penalty of up to fifty dollars for each fixed place of business of the master account holder. If the report is filed within fifteen days after the commissioner mails the delinquency notice, the penalty may be remitted in full or in part by the commissioner. But if the master account holder fails to file the report within fifteen days after the commissioner mails the notice, the commissioner shall impose a penalty of up to one hundred dollars for each fixed place of business of the master account holder. This penalty may not be remitted in full by the commissioner. A penalty imposed under this division is subject to collection and assessment in the same manner as any tax levied under this chapter.

(C)(1) Within seventy-five days after the thirtieth day of June and the thirty-first day of December of each year, the tax commissioner shall determine for each county both of the following:

(a) The amount of taxes paid by all vendors licensed under division (A) of section 5739.17 of the Revised Code that were levied by sections 5739.021 and 5739.026 of the Revised Code and were collected by the county in accordance with the destination-based sourcing requirements;

(b) The amount of taxes levied by those sections that would have been paid to the county by vendors licensed under division (A) of section 5739.17

of the Revised Code if the taxes had been collected by the county in accordance with section 5739.035 of the Revised Code.

The commissioner may make any adjustments that are necessary to account for delinquent tax returns or reports.

(2) In making the determination required by division (C)(1) of this section, the commissioner shall use the lesser of the county's tax rate in effect as of January 1, 2005, or the actual tax rate in effect for the six-month period for which the compensation was calculated.

(3) The commissioner also shall calculate the percentage difference between the amounts determined under divisions (C)(1)(a) and (b) of this section by using a fraction, with the amount determined under division (C)(1)(a) of this section in the numerator, and the amount determined under division (C)(1)(b) of this section in the denominator.

(D)(1) If the percentage difference calculated under division (C)(3) of this section for a county is ninety-six per cent or less, and the county is an impacted county under this section, the county shall receive compensation. Within ninety days after the thirtieth day of June and the thirty-first day of December of each year, the tax commissioner, in the next ensuing payment to be made under division (B)(1) of section 5739.21 of the Revised Code, shall in addition provide from the general revenue fund to such county compensation in the amount of ninety-eight per cent of the denominator calculated under division (C)(3) of this section, minus the numerator calculated under division (C)(3) of this section.

(2) A county that is entitled to compensation under division (D)(1) of this section may request an advance payment of that compensation. The commissioner shall adopt rules that establish the manner by which such county may make the request and the method the commissioner will use to determine the amount of the advance payment to be made to the county. Compensation provided under division (D)(1) of this section shall be adjusted accordingly to account for advance payments made under division (D)(2) of this section.

(E) If, under division (C)(1) of this section, the tax commissioner determines that a county collected more taxes under the destination-based sourcing requirements than it would have collected if taxes had been paid in accordance with section 5739.035 of the Revised Code, the county is a windfall county under this division. Within ninety days after the thirtieth day of June and the thirty-first day of December of each year, the commissioner, in the next ensuing payment to be made under division (B)(1) of section 5739.21 of the Revised Code, shall reduce the amount to be returned to each windfall county by the total amount of excess taxes that

would have been received by all windfall counties in proportion to the total amount needed to compensate counties under division (D) of this section.

(F) The commissioner shall make available to the public the determinations made under division (C) of this section, but any data obtained from taxpayers under this section or that would identify those taxpayers shall remain confidential.

(G) There is hereby created the county compensation tax study committee. The committee shall consist of the following seven members: the tax commissioner, three members of the senate appointed by the president of the senate, and three members of the house of representatives appointed by the speaker of the house of representatives. The appointments shall be made not later than January 31, 2006. The tax commissioner shall be the chairperson of the committee and the department of taxation shall provide any information and assistance that is required by the committee to carry out its duties. The committee shall study the extent to which each county has been impacted by the destination-based sourcing requirements. Not later than June 30, 2006, the committee shall issue a report of its findings and shall make recommendations to the president of the senate and the speaker of the house of representatives, at which time the committee shall cease to exist.

Sec. 5740.05. The tax commissioner shall not enter into the agreement unless the agreement requires each state to meet the requirements set forth in divisions (A) to (I) of this section. The agreement shall:

(A) Set restrictions to limit over time the number of state sales and use tax rates;

(B) Establish uniform standards for attributing the source of transactions to taxing jurisdictions, the administration of exempt sales, and sales and use tax returns and remittances;

(C) Provide a central, electronic registration system that allows a seller to register to collect sales and use taxes for, and remit them to, all member states;

(D) Provide that registration with the central registration system and the collection of sales and use taxes in the member states will not be used as a factor in determining whether the seller has nexus with a state for any tax;

(E) Provide for reduction of the burdens of complying with local sales and use taxes through the following:

(1) Restricting variances between the state and local tax bases;

(2) Requiring states to administer any sales and use taxes levied by local jurisdictions within the states so that sellers collecting and remitting those taxes will not have to register or file returns with, remit funds to, or be

subject to independent audits from, local taxing jurisdictions;

(3) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes;

(4) Providing notice to sellers and certified service providers of changes in local sales and use tax rates and in the boundaries of local taxing jurisdictions.

(F) Outline any monetary allowances that are to be provided by the member states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity~~, to be completed by July 1, 2002~~.

(G) Require each state to certify compliance with the terms of the agreement prior to becoming a member of the agreement, and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(H) Require each member state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information;

(I) Provide for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult with in the administration of the agreement.

Sec. 5740.08. (A) As used in this section:

(1) "Confidential taxpayer information" means all information that is protected under Title LVII of the Revised Code or other applicable law.

(2) "Personally identifiable information" means information that identifies a person.

(3) "Anonymous data" means information that does not identify a person.

(B) A certified service provider shall preserve the privacy of consumers who buy, lease, or rent tangible personal property or services from sellers with whom the provider has contracted for the collection and remittance of sales and use taxes to this state. The certified service provider shall protect the personally identifiable information of a consumer ~~information~~ in the same manner as required of the department of taxation for taxpayer information. The certified service provider shall use a certified automated system to perform sales and use tax calculations, remittances, and reporting that does not retain the personally identifiable information of consumers, except as follows:

(1) To determine whether a consumer's status or intended use of the goods or services purchased is exempt from the sales or use tax;

(2) To investigate fraud by a consumer or seller;

(3) To the extent necessary to ensure the reliability of the providers' technology and certified automated system in performing all of a seller's sales and use tax functions.

The certified service provider shall provide technical, physical, and administrative safeguards to protect personally identifiable information from unauthorized access and disclosure.

~~(B) A certified service provider~~ (C) The tax commissioner shall provide to consumers clear and conspicuous notice of ~~its~~ the commissioner's information retention and sharing practices, including what personally identifiable information ~~it~~ the commissioner collects, how the information collected is used, how long the information is retained, and whether the information ~~is~~ may be disclosed to other ~~member~~ states. ~~A provider that retains personally identifiable information in accordance with division (A) of this section shall notify consumers of its intent to retain such information and shall afford consumers reasonable access to their data and the opportunity to correct inaccurately recorded data.~~ When the commissioner retains a consumer's personally identifiable information that the commissioner received from a certified service provider, the commissioner shall allow the consumer to examine that information and correct any inaccurately recorded information.

~~(C)~~(D) If any person, other than a member state or a person otherwise authorized by the laws of this state, seeks to discover a consumer's personally identifiable information, the tax commissioner shall make a reasonable and timely effort ~~shall be made by the provider~~ to notify the consumer of such request.

~~(D)~~(E) Notwithstanding this section, the laws of this state regarding the collection, use, and maintenance of confidential taxpayer information remain applicable and binding. The agreement does not enlarge or limit this state's authority to do any of the following:

(1) Conduct audits or other reviews as provided under the agreement or state law;

(2) Provide records pursuant to section 149.43 of the Revised Code or to governmental agencies under disclosure laws;

(3) Prevent the disclosure of confidential taxpayer information in accordance with Title LVII of the Revised Code;

(4) Prevent, consistent with federal law, the disclosure or misuse of federal return information obtained under a disclosure agreement with the

Internal Revenue Service;

(5) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

~~(E)~~(F) This section does not enlarge or limit the privacy policies of any seller that has selected a certified service provider as its agent to perform all of the seller's sales and use tax functions.

~~(F)~~(G) A certified service provider that fails to comply with this section is subject to investigation by the tax commissioner or the commissioner's agents and the attorney general, and to prosecution by the attorney general.

Sec. 5740.09. (A) No cause of action shall accrue against a seller for over-collection of the taxes levied by section 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code until the purchaser has provided written notice of the over-collection to the seller and the seller has had sixty days after the notice was mailed to respond. The notice must contain the information necessary to determine the validity of the request. In no case shall a cause of action accrue against a seller for the over-collection of such taxes if either the purchaser or the seller has filed a refund claim for the over-collection pursuant to section 5739.07 or 5741.10 of the Revised Code.

(B) In connection with a purchaser's request from a seller of over-collected taxes under division (A) of this section, a seller shall be presumed to have a reasonable business practice if, in the collection of the taxes, the seller does both of the following:

(1) Uses either a certified service provider or a certified automated system, including a proprietary system; and

(2) Has remitted to the state all taxes collected, less any deductions or collection allowances provided by section 5739.12 or 5741.12 of the Revised Code.

Sec. 5740.10. As used in this section, "vendors" means persons licensed under division (A) of section 5739.17 of the Revised Code that have limited Ohio taxable sales, as defined by the tax commissioner under this section.

To address the impact the change from origin-based sourcing under section 5739.035 of the Revised Code to destination-based sourcing under section 5739.033 of the Revised Code has on vendors, the tax commissioner shall work with the states that are implementing the interstate streamlined sales and use tax agreement to encourage the adoption of an amendment to the agreement that allows states to mitigate the impact by allowing vendors to source sales at the vendors' places of business. If the amendment is adopted or if this change in sourcing is otherwise allowed without amendment of the agreement, the commissioner shall adopt a rule that

excepts vendors from destination-based sourcing under section 5739.033 of the Revised Code, but that otherwise keeps Ohio in substantial compliance with the agreement.

Sec. 5741.05. (A) ~~A~~ Beginning January 1, 2005, a seller that collects the tax levied by sections 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code on transactions, other than sales of titled motor vehicles, titled watercraft, or titled outboard motors, shall determine under section 5739.033 or 5739.034 of the Revised Code the jurisdiction for which to collect the tax. A vendor or seller of motor vehicles, watercraft, or outboard motors required to be titled in this state shall collect the tax levied by section 5739.02 or 5741.02 of the Revised Code and the additional taxes levied by division (A)(1) of section 5741.021, division (A)(1) of section 5741.022, and division (A)(1) of section 5741.023 of the Revised Code for the consumer's county of residence as provided in section 1548.06 and division (B) of section 4505.06 of the Revised Code.

(B) A vendor or seller is not responsible for collecting or remitting additional tax if a consumer subsequently stores, uses, or consumes the tangible personal property or service in another jurisdiction with a rate of tax imposed by sections 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code that is higher than the amount collected by the vendor or seller pursuant to Chapter 5739. or 5741. of the Revised Code.

SECTION 2. That existing sections 5703.70, 5739.033, 5739.034, 5739.17, 5740.05, 5740.08, and 5741.05 of the Revised Code are hereby repealed.

SECTION 3. The version of section 5739.033 of the Revised Code that results from Section 1 of Am. Sub. H.B. 95 of the 125th General Assembly is hereby repealed. This repeal does not affect the version of section 5739.033 of the Revised Code that results from Section 3.16 of Am. Sub. H.B. 95 of the 125th General Assembly, and that was intended to take effect July 1, 2005. Rather, that version of section 5739.033 of the Revised Code is amended by this act and, as amended by this act, takes effect January 1, 2005.

SECTION 4. That Section 4 of Am. Sub. H.B. 168 of the 125th General Assembly, as amended by Sub. H.B. 204 of the 125th General Assembly, be amended to read as follows:

Sec. 4. Notwithstanding Section 3 of Am. Sub. S.B. 143 of the 124th General Assembly, as subsequently amended by Section 8 of Sub. S.B. 47 of the 125th General Assembly and Section 134.14 of Am. Sub. H.B. 95 of the 125th General Assembly, the enactment of section 5741.05 of the Revised Code by Am. Sub. S.B. 143 of the 124th General Assembly shall take effect ~~July~~ January 1, 2005. The General Assembly intends by enacting this section to clarify that the operation of section 5741.05 of the Revised Code ~~was~~ is to be coordinated with the ~~revised~~ revised effective ~~dates to~~ date of amended section 5739.033 of the Revised Code ~~that were made by Sub. S.B. 47 of the 125th General Assembly and Sub. H.B. 127 of the 125th General Assembly~~.

SECTION 5. That existing Section 4 of Am. Sub. H.B. 168 of the 125th General Assembly, as amended by Sub. H.B. 204 of the 125th General Assembly, is hereby repealed.

SECTION 6. That Section 3.18 of Am. Sub. H.B. 95 of the 125th General Assembly, as most recently amended by Sub. H.B. 127 and Sub. H.B. 204, both of the 125th General Assembly, is hereby repealed.

SECTION 7. That Section 8 of Sub. H.B. 204 of the 125th General Assembly is hereby repealed.

SECTION 8. Sections 5739.033, 5739.034, 5739.035, 5740.10, and 5741.05 of the Revised Code, as amended or enacted by this act, provide for or are essential to the implementation of a tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, those sections as amended or enacted by this act are not subject to the referendum and go into immediate effect when this act becomes law.

SECTION 9. Sections 3 to 9 of this act provide for or are essential to the implementation of a tax levy. Therefore, under Ohio Constitution, Article II, Section 1d, Sections 3 to 9 of this act are not subject to the referendum and go into immediate effect when this act becomes law.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____