

**As Passed by the House**

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**Am. H. B. No. 347**

**Representative Jones**

**Cosponsors: Representatives Roemer, Lorenz, King, Abdullahi, Abrams, Brennan, Brent, Carruthers, Creech, Cross, Cutrona, Daniels, Dell'Aquila, Dobos, Edwards, Forhan, Gross, Hall, Hillyer, Holmes, Isaacsohn, Jarrells, Klopfenstein, Lampton, LaRe, Loychik, Mathews, McClain, Miller, A., Miller, J., Miller, K., Mohamed, Pavliga, Peterson, Richardson, Robb Blasdel, Rogers, Russo, Thomas, C., Upchurch, Williams, Young, T.**



**A BILL**

To amend section 5739.03 of the Revised Code to  
allow an alternative method for certain farmers  
to verify that certain trailers and vehicles are  
purchased for agricultural purposes and thus  
exempt from sales and use tax.

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

**Section 1.** That section 5739.03 of the Revised Code be  
amended to read as follows:

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

(1) If the price is, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, paid in currency passed from hand to hand by the consumer or the consumer's agent to the vendor or the vendor's agent, the vendor or the vendor's agent shall collect the tax with and at the same time as the price;

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B) (1) (a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B) (1) to (11), (28), (48), (55), (59), or (66) of section 5739.02 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for

collecting and remitting tax on any sale covered by that 46  
certificate. If it is determined the exemption was improperly 47  
claimed, the consumer shall be liable for any tax due on that 48  
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 49  
Chapter 5741. of the Revised Code. Relief under this division 50  
from liability does not apply to any of the following: 51

(i) A vendor that fraudulently fails to collect tax; 52

(ii) A vendor that solicits consumers to participate in 53  
the unlawful claim of an exemption; 54

(iii) A vendor that accepts an exemption certificate from 55  
a consumer that claims an exemption based on who purchases or 56  
who sells property or a service, when the subject of the 57  
transaction sought to be covered by the exemption certificate is 58  
actually received by the consumer at a location operated by the 59  
vendor in this state, and this state has posted to its web site 60  
an exemption certificate form that clearly and affirmatively 61  
indicates that the claimed exemption is not available in this 62  
state; 63

(iv) A vendor that accepts an exemption certificate from a 64  
consumer who claims a multiple points of use exemption under 65  
division (D) of section 5739.033 of the Revised Code, if the 66  
item purchased is tangible personal property, other than 67  
prewritten computer software. 68

(2) The vendor shall maintain records, including exemption 69  
certificates, of all sales on which a consumer has claimed an 70  
exemption, and provide them to the tax commissioner on request. 71

(3) The tax commissioner may establish an identification 72  
system whereby the commissioner issues an identification number 73  
to a consumer that is exempt from payment of the tax. The 74

consumer must present the number to the vendor, if any sale is 75  
claimed to be exempt as provided in this section. 76

(4) If no certificate is provided or obtained within 77  
ninety days after the date on which such sale is consummated, it 78  
shall be presumed that the tax applies. Failure to have so 79  
provided or obtained a certificate shall not preclude a vendor, 80  
within one hundred twenty days after the tax commissioner gives 81  
written notice of intent to levy an assessment, from either 82  
establishing that the sale is not subject to the tax, or 83  
obtaining, in good faith, a fully completed exemption 84  
certificate. 85

(5) Certificates need not be obtained nor provided where 86  
the identity of the consumer is such that the transaction is 87  
never subject to the tax imposed or where the item of tangible 88  
personal property sold or the service provided is never subject 89  
to the tax imposed, regardless of use, or when the sale is in 90  
interstate commerce. 91

(6) If a transaction is claimed to be exempt under 92  
division (B) (13) of section 5739.02 of the Revised Code, the 93  
contractor shall obtain certification of the claimed exemption 94  
from the contractee. This certification shall be in addition to 95  
an exemption certificate provided by the contractor to the 96  
vendor. A contractee that provides a certification under this 97  
division shall be deemed to be the consumer of all items 98  
purchased by the contractor under the claim of exemption, if it 99  
is subsequently determined that the exemption is not properly 100  
claimed. The certification shall be in such form as the tax 101  
commissioner prescribes. 102

(7) (a) Division (B) (7) of this section applies to a sale 103  
that is claimed to be exempt under division (B) (42) (n) of 104

section 5739.02 of the Revised Code on the purchase of the 105  
following items with the purpose to use or consume those items 106  
primarily in producing tangible personal property for sale by 107  
farming, agriculture, horticulture, or floriculture: 108

(i) Trailers, as defined in section 4501.01 of the Revised 109  
Code, but excluding vehicles designed to transport watercraft; 110

(ii) Utility vehicles, as defined in section 4501.01 of 111  
the Revised Code; 112

(iii) All-purpose vehicles, as defined in section 4519.01 113  
of the Revised Code; 114

(iv) Compact tractors, as defined in section 1353.01 of 115  
the Revised Code. 116

(b) A consumer may verify eligibility for the exemption 117  
by: 118

(i) Providing the vendor with a certificate, prescribed 119  
and issued by the tax commissioner, verifying that the consumer 120  
has filed with the commissioner copies of a schedule F, as that 121  
term is defined in section 718.01 of the Revised Code, filed by 122  
the consumer for the three most recent preceding federal taxable 123  
years for which federal income tax returns were due pursuant to 124  
sections 6072 and 6081 of the Internal Revenue Code; 125

(ii) Providing the commissioner with such a schedule F for 126  
each of those taxable years. 127

(c) If a consumer provides the documents described in 128  
division (B)(7)(b) of this section, no other documentation or 129  
explanation shall be required by the vendor or commissioner to 130  
verify the consumer's exemption eligibility. 131

(C) As used in this division, "contractee" means a person 132

who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property.

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

For the purposes of the taxes levied by this chapter and Chapter 5741. of the Revised Code, the contractor or vendor may in good faith rely on the contractee's certification. Notwithstanding division (B) of section 5739.01 of the Revised Code, if the tax commissioner determines that certain property certified by the contractee as tangible personal property pursuant to this division is, in fact, real property, the contractee shall be considered to be the consumer of all materials so incorporated into that real property and shall be liable for the applicable tax, and the contractor or vendor

shall be excused from any liability on those materials. 164

If a contractee fails to provide such certification upon 165  
the request of the contractor or vendor, the contractor or 166  
vendor shall comply with the provisions of this chapter and 167  
Chapter 5741. of the Revised Code without the certification. If 168  
the tax commissioner determines that such compliance has been 169  
performed in good faith and that certain property treated as 170  
tangible personal property by the contractor or vendor is, in 171  
fact, real property, the contractee shall be considered to be 172  
the consumer of all materials so incorporated into that real 173  
property and shall be liable for the applicable tax, and the 174  
construction contractor or vendor shall be excused from any 175  
liability on those materials. 176

This division does not apply to any contract or agreement 177  
where the tax commissioner determines as a fact that a 178  
certification under this division was made solely on the 179  
decision or advice of the contractor or vendor. 180

(D) Notwithstanding division (B) of section 5739.01 of the 181  
Revised Code, whenever the total rate of tax imposed under this 182  
chapter is increased after the date after a construction 183  
contract is entered into, the contractee shall reimburse the 184  
construction contractor for any additional tax paid on tangible 185  
property consumed or services received pursuant to the contract. 186

(E) A vendor who files a petition for reassessment 187  
contesting the assessment of tax on sales for which the vendor 188  
obtained no valid exemption certificates and for which the 189  
vendor failed to establish that the sales were properly not 190  
subject to the tax during the one-hundred-twenty-day period 191  
allowed under division (B) of this section, may present to the 192  
tax commissioner additional evidence to prove that the sales 193

were properly subject to a claim of exception or exemption. The 194  
vendor shall file such evidence within ninety days of the 195  
receipt by the vendor of the notice of assessment, except that, 196  
upon application and for reasonable cause, the period for 197  
submitting such evidence shall be extended thirty days. 198

The commissioner shall consider such additional evidence 199  
in reaching the final determination on the assessment and 200  
petition for reassessment. 201

(F) Whenever a vendor refunds the price, minus any 202  
separately stated delivery charge, of an item of tangible 203  
personal property on which the tax imposed under this chapter 204  
has been paid, the vendor shall also refund the amount of tax 205  
paid, minus the amount of tax attributable to the delivery 206  
charge. 207

**Section 2.** That existing section 5739.03 of the Revised 208  
Code is hereby repealed. 209

**Section 3.** The amendment of section 5739.03 of the Revised 210  
Code by this act applies on and after the first day of the first 211  
month that begins after the effective date of this section. 212