

As Reported by the House Ways and Means Committee

133rd General Assembly

Regular Session

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Sub. H. B. No. 419

Representative Swearingen

Cosponsors: Representatives Lang, Riedel, Merrin, Rogers, Green

A BILL

To amend section 5741.02 of the Revised Code to
exempt from state and local use taxes certain
watercraft seasonally stored or repaired in
Ohio.

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

Section 1. That section 5741.02 of the Revised Code be
amended to read as follows:

Sec. 5741.02. (A) (1) For the use of the general revenue
fund of the state, an excise tax is hereby levied on the
storage, use, or other consumption in this state of tangible
personal property or the benefit realized in this state of any
service provided. The tax shall be collected as provided in
section 5739.025 of the Revised Code. The rate of the tax shall
be five and three-fourths per cent.

(2) In the case of the lease or rental, with a fixed term
of more than thirty days or an indefinite term with a minimum
period of more than thirty days, of any motor vehicles designed
by the manufacturer to carry a load of not more than one ton,
watercraft, outboard motor, or aircraft, or of any tangible

personal property, other than motor vehicles designed by the 19
manufacturer to carry a load of more than one ton, to be used by 20
the lessee or renter primarily for business purposes, the tax 21
shall be collected by the seller at the time the lease or rental 22
is consummated and shall be calculated by the seller on the 23
basis of the total amount to be paid by the lessee or renter 24
under the lease or rental agreement. If the total amount of the 25
consideration for the lease or rental includes amounts that are 26
not calculated at the time the lease or rental is executed, the 27
tax shall be calculated and collected by the seller at the time 28
such amounts are billed to the lessee or renter. In the case of 29
an open-end lease or rental, the tax shall be calculated by the 30
seller on the basis of the total amount to be paid during the 31
initial fixed term of the lease or rental, and for each 32
subsequent renewal period as it comes due. As used in this 33
division, "motor vehicle" has the same meaning as in section 34
4501.01 of the Revised Code, and "watercraft" includes an 35
outdrive unit attached to the watercraft. 36

(3) Except as provided in division (A) (2) of this section, 37
in the case of a transaction, the price of which consists in 38
whole or part of the lease or rental of tangible personal 39
property, the tax shall be measured by the installments of those 40
leases or rentals. 41

(B) Each consumer, storing, using, or otherwise consuming 42
in this state tangible personal property or realizing in this 43
state the benefit of any service provided, shall be liable for 44
the tax, and such liability shall not be extinguished until the 45
tax has been paid to this state; provided, that the consumer 46
shall be relieved from further liability for the tax if the tax 47
has been paid to a seller in accordance with section 5741.04 of 48
the Revised Code or prepaid by the seller in accordance with 49

section 5741.06 of the Revised Code. 50

(C) The tax does not apply to the storage, use, or 51
consumption in this state of the following described tangible 52
personal property or services, nor to the storage, use, or 53
consumption or benefit in this state of tangible personal 54
property or services purchased under the following described 55
circumstances: 56

(1) When the sale of property or service in this state is 57
subject to the excise tax imposed by sections 5739.01 to 5739.31 58
of the Revised Code, provided said tax has been paid; 59

(2) Except as provided in division (D) of this section, 60
tangible personal property or services, the acquisition of 61
which, if made in Ohio, would be a sale not subject to the tax 62
imposed by sections 5739.01 to 5739.31 of the Revised Code; 63

(3) Property or services, the storage, use, or other 64
consumption of or benefit from which this state is prohibited 65
from taxing by the Constitution of the United States, laws of 66
the United States, or the Constitution of this state. This 67
exemption shall not exempt from the application of the tax 68
imposed by this section the storage, use, or consumption of 69
tangible personal property that was purchased in interstate 70
commerce, but that has come to rest in this state, provided that 71
fuel to be used or transported in carrying on interstate 72
commerce that is stopped within this state pending transfer from 73
one conveyance to another is exempt from the excise tax imposed 74
by this section and section 5739.02 of the Revised Code; 75

(4) Transient use of tangible personal property in this 76
state by a nonresident tourist or vacationer, or a nonbusiness 77
use within this state by a nonresident of this state, if the 78

property so used was purchased outside this state for use 79
outside this state and is not required to be registered or 80
licensed under the laws of this state; 81

(5) Tangible personal property or services rendered, upon 82
which taxes have been paid to another jurisdiction to the extent 83
of the amount of the tax paid to such other jurisdiction. Where 84
the amount of the tax imposed by this section and imposed 85
pursuant to section 5741.021, 5741.022, or 5741.023 of the 86
Revised Code exceeds the amount paid to another jurisdiction, 87
the difference shall be allocated between the tax imposed by 88
this section and any tax imposed by a county or a transit 89
authority pursuant to section 5741.021, 5741.022, or 5741.023 of 90
the Revised Code, in proportion to the respective rates of such 91
taxes. 92

As used in this subdivision, "taxes paid to another 93
jurisdiction" means the total amount of retail sales or use tax 94
or similar tax based upon the sale, purchase, or use of tangible 95
personal property or services rendered legally, levied by and 96
paid to another state or political subdivision thereof, or to 97
the District of Columbia, where the payment of such tax does not 98
entitle the taxpayer to any refund or credit for such payment. 99

(6) The transfer of a used manufactured home or used 100
mobile home, as defined by section 5739.0210 of the Revised 101
Code, made on or after January 1, 2000; 102

(7) Drugs that are or are intended to be distributed free 103
of charge to a practitioner licensed to prescribe, dispense, and 104
administer drugs to a human being in the course of a 105
professional practice and that by law may be dispensed only by 106
or upon the order of such a practitioner; 107

(8) Computer equipment and related software leased from a lessor located outside this state and initially received in this state on behalf of the consumer by a third party that will retain possession of such property for not more than ninety days and that will, within that ninety-day period, deliver such property to the consumer at a location outside this state. Division (C) (8) of this section does not provide exemption from taxation for any otherwise taxable charges associated with such property while it is in this state or for any subsequent storage, use, or consumption of such property in this state by or on behalf of the consumer.

(9) Tangible personal property held for sale by a person but not for that person's own use and donated by that person, without charge or other compensation, to either of the following:

(a) A nonprofit organization operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; or

(b) This state or any political subdivision of this state, but only if donated for exclusively public purposes.

For the purposes of division (C) (9) of this section, "charitable purposes" has the same meaning as in division (B) (12) of section 5739.02 of the Revised Code.

(10) Equipment stored, used, or otherwise consumed in this state by an out-of-state disaster business during a disaster response period during which the business conducts disaster work

pursuant to a qualifying solicitation received by the business, 137
provided the equipment is removed from the state before the last 138
day of that period. All terms used in division (C) (10) of this 139
section have the same meanings as in section 5703.94 of the 140
Revised Code. 141

(11) (a) Watercraft, if all of the following apply: 142

(i) The watercraft is in this state only for storage and 143
maintenance purposes. 144

(ii) The watercraft is not used or stored in this state 145
between the first day of May and the last day of September of 146
any year. 147

(iii) The watercraft is not required to be registered in 148
this state under section 1547.54 of the Revised Code. 149

(iv) The owner paid taxes to another jurisdiction on the 150
sale, use, or consumption of the watercraft or paid sales tax on 151
the watercraft under section 5739.027 of the Revised Code, 152
unless the watercraft is used and titled or registered in a 153
jurisdiction that does not impose a sales or use tax or similar 154
excise tax on the ownership or use of the watercraft. 155

(b) As used in division (C) (11) of this section: 156

(i) "Taxes paid to another jurisdiction" has the same 157
meaning as in division (C) (5) of this section. 158

(ii) "Maintenance" means any act to preserve or improve 159
the condition or efficiency of a watercraft including cleaning 160
and repairing the watercraft and installing equipment, fixtures, 161
or technology in or on the watercraft. 162

(c) Nothing in division (C) (11) of this section exempts 163
sales of storage of watercraft taxable under division (B) (9) of 164

section 5739.01 of the Revised Code or sales of repair or 165
installation of tangible personal property in or on the 166
watercraft taxable under division (B) (3) (a) or (b) of that 167
section. 168

(D) The tax applies to the storage, use, or other 169
consumption in this state of tangible personal property or 170
services, the acquisition of which at the time of sale was 171
excepted under division (E) of section 5739.01 of the Revised 172
Code from the tax imposed by section 5739.02 of the Revised 173
Code, but which has subsequently been temporarily or permanently 174
stored, used, or otherwise consumed in a taxable manner. 175

(E) (1) (a) If any transaction is claimed to be exempt under 176
division (E) of section 5739.01 of the Revised Code or under 177
section 5739.02 of the Revised Code, with the exception of 178
divisions (B) (1) to (11) or (28) of section 5739.02 of the 179
Revised Code, the consumer shall provide to the seller, and the 180
seller shall obtain from the consumer, a certificate specifying 181
the reason that the transaction is not subject to the tax. The 182
certificate shall be in such form, and shall be provided either 183
in a hard copy form or electronic form, as the tax commissioner 184
prescribes. 185

(b) A seller that obtains a fully completed exemption 186
certificate from a consumer is relieved of liability for 187
collecting and remitting tax on any sale covered by that 188
certificate. If it is determined the exemption was improperly 189
claimed, the consumer shall be liable for any tax due on that 190
sale under this chapter. Relief under this division from 191
liability does not apply to any of the following: 192

(i) A seller that fraudulently fails to collect tax; 193

(ii) A seller that solicits consumers to participate in	194
the unlawful claim of an exemption;	195
(iii) A seller that accepts an exemption certificate from	196
a consumer that claims an exemption based on who purchases or	197
who sells property or a service, when the subject of the	198
transaction sought to be covered by the exemption certificate is	199
actually received by the consumer at a location operated by the	200
seller in this state, and this state has posted to its web site	201
an exemption certificate form that clearly and affirmatively	202
indicates that the claimed exemption is not available in this	203
state;	204
(iv) A seller that accepts an exemption certificate from a	205
consumer who claims a multiple points of use exemption under	206
division (D) of section 5739.033 of the Revised Code, if the	207
item purchased is tangible personal property, other than	208
prewritten computer software.	209
(2) The seller shall maintain records, including exemption	210
certificates, of all sales on which a consumer has claimed an	211
exemption, and provide them to the tax commissioner on request.	212
(3) If no certificate is provided or obtained within	213
ninety days after the date on which the transaction is	214
consummated, it shall be presumed that the tax applies. Failure	215
to have so provided or obtained a certificate shall not preclude	216
a seller, within one hundred twenty days after the tax	217
commissioner gives written notice of intent to levy an	218
assessment, from either establishing that the transaction is not	219
subject to the tax, or obtaining, in good faith, a fully	220
completed exemption certificate.	221
(4) If a transaction is claimed to be exempt under	222

division (B) (13) of section 5739.02 of the Revised Code, the 223
contractor shall obtain certification of the claimed exemption 224
from the contractee. This certification shall be in addition to 225
an exemption certificate provided by the contractor to the 226
seller. A contractee that provides a certification under this 227
division shall be deemed to be the consumer of all items 228
purchased by the contractor under the claim of exemption, if it 229
is subsequently determined that the exemption is not properly 230
claimed. The certification shall be in such form as the tax 231
commissioner prescribes. 232

(F) A seller who files a petition for reassessment 233
contesting the assessment of tax on transactions for which the 234
seller obtained no valid exemption certificates, and for which 235
the seller failed to establish that the transactions were not 236
subject to the tax during the one-hundred-twenty-day period 237
allowed under division (E) of this section, may present to the 238
tax commissioner additional evidence to prove that the 239
transactions were exempt. The seller shall file such evidence 240
within ninety days of the receipt by the seller of the notice of 241
assessment, except that, upon application and for reasonable 242
cause, the tax commissioner may extend the period for submitting 243
such evidence thirty days. 244

(G) For the purpose of the proper administration of 245
sections 5741.01 to 5741.22 of the Revised Code, and to prevent 246
the evasion of the tax hereby levied, it shall be presumed that 247
any use, storage, or other consumption of tangible personal 248
property in this state is subject to the tax until the contrary 249
is established. 250

(H) The tax collected by the seller from the consumer 251
under this chapter is not part of the price, but is a tax 252

collection for the benefit of the state, and of counties levying 253
an additional use tax pursuant to section 5741.021 or 5741.023 254
of the Revised Code and of transit authorities levying an 255
additional use tax pursuant to section 5741.022 of the Revised 256
Code. Except for the discount authorized under section 5741.12 257
of the Revised Code and the effects of any rounding pursuant to 258
section 5703.055 of the Revised Code, no person other than the 259
state or such a county or transit authority shall derive any 260
benefit from the collection of such tax. 261

Section 2. That existing section 5741.02 of the Revised 262
Code is hereby repealed. 263

Section 3. The amendment by this act of section 5741.02 of 264
the Revised Code applies beginning the first day of the first 265
month beginning on or after the effective date of this act. 266

Section 4. Pursuant to division (G) of section 5703.95 of 267
the Revised Code, which states that any bill introduced in the 268
House of Representatives or the Senate that proposes to enact or 269
modify one or more tax expenditures should include a statement 270
explaining the objectives of the tax expenditure or its 271
modification and the sponsor's intent in proposing the tax 272
expenditure or its modification: 273

The objective of this act is to increase business to 274
Ohio's marine industry by removing a disincentive for out-of- 275
state boat owners from coming into Ohio with their business. 276

Currently, subjecting boats to use taxes on the value of 277
the boat has resulted in out-of-state boats going elsewhere for 278
winter storage, repair, and refitting work. The charge for 279
winter storage notwithstanding, most winter work orders from 280
customers are estimated to range from fifteen thousand dollars 281

to one hundred thousand dollars. The loss of even one major job, 282
never mind several, could mean the success or failure of a 283
marine business. 284

The state of Ohio also suffers significant losses. 285
Virtually everything related to winter storage and work is 286
subject to sales tax, including parts, materials, labor, and 287
storage. When a boat is not winter-stored in Ohio, there are not 288
only no related sales taxes collected, but also no commercial 289
activity taxes and no income taxes. 290