

As Reported by the House Ways and Means Committee

135th General Assembly

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Am. H. B. No. 347

Representative Jones

Cosponsors: Representatives Roemer, Lorenz, King

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 19
agent, the vendor or the vendor's agent shall collect the tax 20
with and at the same time as the price; 21

(2) If the price is otherwise paid or to be paid, the 22
vendor or the vendor's agent shall, at or prior to the provision 23
of the service or the delivery of possession of the thing sold 24
to the consumer, charge the tax imposed by or pursuant to 25
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 26
Code to the account of the consumer, which amount shall be 27
collected by the vendor from the consumer in addition to the 28
price. Such sale shall be reported on and the amount of the tax 29
applicable thereto shall be remitted with the return for the 30
period in which the sale is made, and the amount of the tax 31
shall become a legal charge in favor of the vendor and against 32
the consumer. 33

(B) (1) (a) If any sale is claimed to be exempt under 34
division (E) of section 5739.01 of the Revised Code or under 35
section 5739.02 of the Revised Code, with the exception of 36
divisions (B) (1) to (11), (28), (48), (55), (59), or (66) of 37
section 5739.02 of the Revised Code, the consumer must provide 38
to the vendor, and the vendor must obtain from the consumer, a 39
certificate specifying the reason that the sale is not legally 40
subject to the tax. The certificate shall be in such form, and 41
shall be provided either in a hard copy form or electronic form, 42
as the tax commissioner prescribes. 43

(b) A vendor that obtains a fully completed exemption 44
certificate from a consumer is relieved of liability for 45
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 133
contractor or vendor for the construction of real property or 134
for the sale and installation onto real property of tangible 135

personal property. 136

Any contractor or vendor may request from any contractee a 137
certification of what portion of the property to be transferred 138
under such contract or agreement is to be incorporated into the 139
realty and what portion will retain its status as tangible 140
personal property after installation is completed. The 141
contractor or vendor shall request the certification by 142
certified mail delivered to the contractee, return receipt 143
requested. Upon receipt of such request and prior to entering 144
into the contract or agreement, the contractee shall provide to 145
the contractor or vendor a certification sufficiently detailed 146
to enable the contractor or vendor to ascertain the resulting 147
classification of all materials purchased or fabricated by the 148
contractor or vendor and transferred to the contractee. This 149
requirement applies to a contractee regardless of whether the 150
contractee holds a direct payment permit under section 5739.031 151
of the Revised Code or provides to the contractor or vendor an 152
exemption certificate as provided under this section. 153

For the purposes of the taxes levied by this chapter and 154
Chapter 5741. of the Revised Code, the contractor or vendor may 155
in good faith rely on the contractee's certification. 156
Notwithstanding division (B) of section 5739.01 of the Revised 157
Code, if the tax commissioner determines that certain property 158
certified by the contractee as tangible personal property 159
pursuant to this division is, in fact, real property, the 160
contractee shall be considered to be the consumer of all 161
materials so incorporated into that real property and shall be 162
liable for the applicable tax, and the contractor or vendor 163
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