Chapter 5741: USE TAX; STORAGE TAX

5741.01 Protecting privacy of consumers.

As used in this chapter:

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, business trusts, governments, and combinations of individuals of any form.

(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state.

(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state.

(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; and whether the consideration was money, credit, barter, or exchange. Purchase includes production, even though the article produced was used, stored, or consumed by the producer. The transfer of copyrighted motion picture films for exhibition purposes is not a purchase, except such films as are used solely for advertising purposes.

(E) "Seller" means the person from whom a purchase is made, and includes every person engaged in this state or elsewhere in the business of selling tangible personal property or providing a service for storage, use, or other consumption or benefit in this state; and when, in the opinion of the tax commissioner, it is necessary for the efficient administration of this chapter, to regard any salesman, representative, peddler, or canvasser as the agent of a dealer, distributor, supervisor, or employer under whom the person operates, or from whom the person obtains tangible personal property, sold b ythe person for storage, use, or other consumption in this state, irrespective of whether or not the person is making such sales on the person's own behalf, or on behalf of such dealer, distributor, supervisor, or employer, the commissioner may regard the person as such agent, and may regard such dealer, distributor, supervisor, or employer as the seller. "Seller" does not include any person to the extent the person provides a communications medium, such as, but not limited to, newspapers, magazines, radio, television, or cable television, by means of which sellers solicit purchases of their goods or services.

(F) "Consumer" means any person who has purchased tangible personal property or has been provided a service for storage, use, or other consumption or benefit in this state. "Consumer" does not include a person who receives, without charge, tangible personal property or a service.

A person who performs a facility management or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E) of section 5739.01 of the Revised Code.

(G)(1) “Price,” except as provided in divisions (G)(2) to (6) of this section, has the same meaning as in division (H)(1) of section 5739.01 of the Revised Code.

(2) In the case of watercraft, outboard motors, or new motor vehicles, “price” has the same meaning as in divisions (H)(2) and (3) of section 5739.01 of the Revised Code.

(3) In the case of a nonresident business consumer that purchases and uses tangible personal property outside this state and subsequently temporarily stores, uses, or otherwise consumes such tangible personal property in the conduct of business in this state, the consumer or the tax commissioner may determine the price based on the value of the temporary storage, use, or other consumption, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(4) In the case of tangible personal property held in this state as inventory for sale or lease, and that is temporarily stored, used, or otherwise consumed in a taxable manner, the price is the value of the temporary use. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(5) In the case of tangible personal property originally purchased and used by the consumer outside this state, and that becomes permanently stored, used, or otherwise consumed in this state more than six months after its acquisition by the consumer, the consumer or the commissioner may determine the price based on the current value of such tangible personal property, in lieu of determining the price pursuant to division (G)(1) of this section. A price determination made by the consumer is subject to review and redetermination by the commissioner.

(6) If a consumer produces tangible personal property for sale and removes that property from inventory for the consumer’s own use, the price is the produced cost of that tangible personal property.

(H) “Nexus with this state” means that the seller engages in continuous and widespread solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state.

(I) “Substantial nexus with this state” means that the seller has sufficient contact with this state, in accordance with Section 8 of Article I of the Constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to consumers in this state. “Substantial nexus with this state” exists when the seller does any of the following:

(1) Maintains a place of business within this state, whether operated by employees or agents of the seller, by a member of an affiliated group, as defined in division (B)(3)(e) of section 5739.01 of the Revised Code, of which the seller is a member, or by a franchisee using a trade name of the seller;

(2) Regularly has employees, agents, representatives, solicitors, installers, repairmen, salesmen, or other individuals in this state for the purpose of conducting the business of the seller;

(3) Uses a person in this state for the purpose of receiving or processing orders of the seller’s goods or services;

(4) Makes regular deliveries of tangible personal property into this state by means other than common carrier;

(5) Has membership in an affiliated group, as described in division (B)(3)(e) of section 5739.01 of the Revised Code, at least one other member of which has substantial nexus with this state;

(6) Owns tangible personal property that is rented or leased to a consumer in this state, or offers tangible personal property, on approval, to consumers in this state;

(7) Except as provided in section 5703.65 of the Revised Code, is registered with the secretary of state to do business in this state or is registered or licensed by any state agency, board, or commission to transact business in this state or to make sales to persons in this state;

(8) Has any other contact with this state that would allow this state to require the seller to collect and remit use tax under Section 8 of Article I of the Constitution of the United States.

(J) “Fiscal officer” means, with respect to a regional transit authority, the secretary-treasurer thereof, and with respect to a county which is a transit authority, the fiscal officer of the county transit board appointed pursuant to section 306.03 of the Revised Code or, if the board of county commissioners operates the county transit system, the county auditor.

(K) “Territory of the transit authority” means all of the area included within the territorial boundaries of a transit authority as they from time to time exist. Such territorial boundaries must at all times include all the area of a single county or all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(L) “Transit authority” means a regional transit authority created pursuant to section 306.31 of the Revised Code or a county in which a county transit system is created pursuant to section 306.01 of the Revised Code. For the purposes of this chapter, a transit authority must extend to at least the entire area of a single county. A transit authority which includes territory in more than one county must include all the area of the most populous county which is a part of such transit authority. County population shall be measured by the most recent census taken by the United States census bureau.

(M) “Providing a service” has the same meaning as in division (X) of section 5739.01 of the Revised Code.

(N) “Other consumption” includes receiving the benefits of a service.

(O) “Lease” or “rental” has the same meaning as in division (UU) of section 5739.01 of the Revised Code.

(P) “Certified service provider” has the same meaning as in section 5740.01 of the Revised Code.

Effective Date: 09-26-2003

5741.011 [Repealed].

Effective Date: 06-26-2003

5741.02 Levy of tax - rate - exemptions.

(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, provided that on and after July 1, 2003, and on or before June 30, 2005, the rate of the tax shall be six per cent. On and after July 1, 2005, the rate of the tax shall be five and one-half 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 manufacturer to carry a load of more than one ton, to be used by the lessee or renter primarily for business purposes, the tax shall be collected by the seller at the time the lease or rental is consummated and shall be calculated by the seller on the basis of the total amount to be paid by the lessee or renter under the lease or rental agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax shall be calculated and collected by the seller at the time such amounts are billed to the lessee or renter. In the case of an open-end lease or rental, the tax shall be calculated by the seller on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due. As used in this division, “motor vehicle” has the same meaning as in section 4501.01 of the Revised Code, and “watercraft” includes an outdrive unit attached to the watercraft.

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

(B) Each consumer, storing, using, or otherwise consuming in this state tangible personal property or realizing in this state the benefit of any service provided, shall be liable for the tax, and such liability shall not be extinguished until the tax has been paid to this state; provided, that the consumer shall be relieved from further liability for the tax if the tax has been paid to a seller in accordance with section 5741.04 of the Revised Code or prepaid by the seller in accordance with section 5741.06 of the Revised Code.

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

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

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

(3) Property or services, the storage, use, or other consumption of or benefit from which this state is prohibited from taxing by the Constitution of the United States, laws of the United States, or the Constitution of this state. This exemption shall not exempt from the application of the tax imposed by

this section the storage, use, or consumption of tangible personal property that was purchased in interstate commerce, but that has come to rest in this state, provided that fuel to be used or transported in carrying on interstate commerce that is stopped within this state pending transfer from one conveyance to another is exempt from the excise tax imposed by this section and section 5739.02 of the Revised Code;

(4) Transient use of tangible personal property in this state by a nonresident tourist or vacationer, or a nonbusiness use within this state by a nonresident of this state, if the property so used was purchased outside this state for use outside this state and is not required to be registered or licensed under the laws of this state;

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

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

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

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

(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)(10) of this section, “charitable purposes” has the same meaning as in division (B)(12) of section 5739.02 of the Revised Code.

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

(E)(1)(a) If any transaction 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) or (28) of section 5739.02 of the Revised Code, the consumer shall provide to the seller, and the seller shall obtain from the consumer, a certificate specifying the reason that the transaction is not 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 seller 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 certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under this chapter. Relief under this division from liability does not apply to any of the following:

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

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

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

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

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

(3) If no certificate is provided or obtained within ninety days after the date on which the transaction is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a seller, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the transaction is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(4) If a transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the seller. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that

the exemption is not properly claimed. The certification shall be in such form as the tax commissioner prescribes.

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

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

(H) The tax collected by the seller from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional use tax pursuant to section 5741.021 or 5741.023 of the Revised Code and of transit authorities levying an additional use tax pursuant to section 5741.022 of the Revised Code. Except for the discount authorized under section 5741.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection of such tax.

Effective Date: 10-21-2003; 06-30-2005; 09-21-2006; 09-28-2006; 2007 HB119 06-30-2007

5741.021 Additional county use tax.

(A) For the purpose of providing additional general revenues for the county or supporting criminal and administrative justice services in the county, or both, and to pay the expenses of administering such levy, any county which levies a tax pursuant to section 5739.021 of the Revised Code shall levy a tax at the same rate levied pursuant to section 5739.021 of the Revised Code on the storage, use, or other consumption in the county of the following:

(1) Motor vehicles by a transaction subject to the tax imposed by section 5739.02 of the Revised Code;

(2) In addition to the tax imposed by section 5741.02 of the Revised Code, tangible personal property and services subject to the tax levied by this state as provided in section 5741.02 of the Revised Code, and tangible personal property and services purchased in another county within this state by a transaction subject to the tax imposed by section 5739.02 of the Revised Code.

The tax shall be levied pursuant to a resolution of the board of county commissioners which shall be adopted after publication of notice and hearing in the same manner as provided in section 5739.021 of the Revised Code. Such resolution shall be adopted and shall become effective on the same day as the resolution adopted by the board of county commissioners levying a sales tax pursuant to section 5739.021 of the Revised Code and shall remain in effect until such sales tax is repealed.

(B) The tax levied pursuant to this section on the storage, use, or other consumption of tangible personal property and on the benefit of a service realized shall be in addition to the tax levied by

section 5741.02 of the Revised Code and, except as provided in division (D) of this section, any tax levied pursuant to sections 5741.022 and 5741.023 of the Revised Code.

(C) The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code. If the additional tax or some portion thereof is levied for the purpose of criminal and administrative justice services, the revenue from the tax, or the amount or rate apportioned to that purpose, shall be credited to a special fund created in the county treasury for receipt of that revenue.

(D) The tax levied pursuant to this section shall not be applicable to any benefit of a service realized or to any storage, use, or consumption of property not within the taxing power of a county under the constitution of the United States or the constitution of this state, or to property or services on which a tax levied by a county or transit authority pursuant to this section or section 5739.021, 5739.023, 5739.026, 5741.022, or 5741.023 of the Revised Code has been paid, if the sum of the taxes paid pursuant to those sections is equal to or greater than the sum of the taxes due under this section and sections 5741.022 and 5741.023 of the Revised Code. If the sum of the taxes paid is less than the sum of the taxes due under this section and sections 5741.022 and 5741.023 of the Revised Code, the amount of tax paid shall be credited against the amount of tax due.

(E) As used in this section, “criminal and administrative justice services” has the same meaning as in section 5739.021 of the Revised Code.

Effective Date: 04-21-1994; 01-01-2006

5741.022 Transit authority levy.

(A) For the purpose of providing additional general revenues for the transit authority and paying the expenses of administering such levy, any transit authority as defined in section 5741.01 of the Revised Code that levies a tax pursuant to section 5739.023 of the Revised Code shall levy a tax at the same rate levied pursuant to such section on the storage, use, or other consumption in the territory of the transit authority of the following:

(1) Motor vehicles by a transaction subject to the tax imposed by section 5739.02 of the Revised Code;

(2) In addition to the tax imposed by section 5741.02 of the Revised Code, tangible personal property and services subject to the tax levied by this state as provided in section 5741.02 of the Revised Code, and tangible personal property and services purchased in another county within this state by a transaction subject to the tax imposed by section 5739.02 of the Revised Code.

The tax shall be in effect at the same time and at the same rate and shall be levied pursuant to the resolution of the legislative authority of the transit authority levying a sales tax pursuant to section 5739.023 of the Revised Code.

(B) The tax levied pursuant to this section on the storage, use, or other consumption of tangible personal property and on the benefit of a service realized shall be in addition to the tax levied by section 5741.02 of the Revised Code and, except as provided in division (D) of this section, any tax levied pursuant to sections 5741.021 and 5741.023 of the Revised Code.

(C) The additional tax levied by the authority shall be collected pursuant to section 5739.025 of the Revised Code.

(D) The tax levied pursuant to this section shall not be applicable to any benefit of a service realized or to any storage, use, or consumption of property not within the taxing power of a transit authority under the constitution of the United States or the constitution of this state, or to property or services on which a tax levied by a county or transit authority pursuant to this section or section 5739.021, 5739.023, 5739.026, 5741.021, or 5741.023 of the Revised Code has been paid, if the sum of the taxes paid pursuant to those sections is equal to or greater than the sum of the taxes due under this section and sections 5741.021 and 5741.023 of the Revised Code. If the sum of the taxes paid is less than the sum of the taxes due under this section and sections 5741.021 and 5741.023 of the Revised Code, the amount of tax paid shall be credited against the amount of tax due.

(E) The rate of a tax levied under this section is subject to reduction under section 5739.028 of the Revised Code if a ballot question is approved by voters pursuant to that section.

Effective Date: 07-19-1995; 01-01-2006

5741.023 County use tax for specific purposes.

(A) For the same purposes for which it has imposed a tax under section 5739.026 of the Revised Code, any county that levies a tax pursuant to such section shall levy a tax at the same rate levied pursuant to such section on the storage, use, or other consumption in the county of the following:

(1) Motor vehicles, and watercraft and outboard motors required to be titled in the county pursuant to Chapter 1548. of the Revised Code, acquired by a transaction subject to the tax imposed by section 5739.02 of the Revised Code;

(2) In addition to the tax imposed by section 5741.02 of the Revised Code, tangible personal property and services subject to the tax levied by this state as provided in section 5741.02 of the Revised Code, and tangible personal property and services purchased in another county within this state by a transaction subject to the tax imposed by section 5739.02 of the Revised Code.

The tax shall be levied pursuant to a resolution of the board of county commissioners, which shall be adopted in the same manner as provided in section 5739.026 of the Revised Code. Such resolution shall be adopted and shall become effective on the same day as the resolution adopted by the board of county commissioners levying a sales tax pursuant to such section and shall remain in effect until such sales tax is repealed or expires.

(B) The tax levied pursuant to this section shall be in addition to the tax levied by section 5741.02 of the Revised Code and, except as provided in division (D) of this section, any tax levied pursuant to sections 5741.021 and 5741.022 of the Revised Code.

(C) The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code.

(D) The tax levied pursuant to this section shall not be applicable to any benefit of a service realized or to any storage, use, or consumption of property not within the taxing power of a county under the constitution of the United States or the constitution of this state, or to property or services on which tax levied by a county or transit authority pursuant to this section or section 5739.021, 5739.023, 5739.026, 5741.021, or 5741.022 of the Revised Code has been paid, if the sum of the taxes paid pursuant to those sections is equal to or greater than the sum of the taxes due under this section and sections 5741.021 and 5741.022 of the Revised Code. If the sum of the taxes paid is less than the sum

of the taxes due under this section and sections 5741.021 and 5741.022 of the Revised Code, the amount of tax paid shall be credited against the amount of tax due.

Effective Date: 03-15-1993; 01-01-2006

5741.03 Use of revenue.

(A) One hundred per cent of all money deposited into the state treasury under sections 5741.01 to 5741.22 of the Revised Code that is not required to be distributed as provided in division (B) of this section shall be credited to the general revenue fund.

(B) In any case where any county or transit authority has levied a tax or taxes pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, the tax commissioner shall, within forty-five days after the end of each month, determine and certify to the director of budget and management the amount of the proceeds of such tax or taxes from billings and assessments received during that month, or shown on tax returns or reports filed during that month, to be returned to the county or transit authority levying the tax or taxes, which amounts shall be determined in the manner provided in section 5739.21 of the Revised Code. The director of budget and management shall transfer, from the general revenue fund, to the permissive tax distribution fund created by division (B)(1) of section 4301.423 of the Revised Code and to the local sales tax administrative fund created by division (C) of section 5739.21 of the Revised Code, the amounts certified by the tax commissioner. The tax commissioner shall then, on or before the twentieth day of the month in which such certification is made, provide for payment of such respective amounts to the county treasurer or to the fiscal officer of the transit authority levying the tax or taxes. The amount transferred to the local sales tax administrative fund is for use by the tax commissioner in defraying costs the commissioner incurs in administering such taxes levied by a county or transit authority.

Effective Date: 03-07-2003; 2007 HB119 12-01-2007; 2008 HB429 01-01-2010

5741.031 Deposit and use of funds.

(A) The funds received by a county levying an additional use tax pursuant to section 5741.021 of the Revised Code shall be deposited in the county general fund to be expended for any purpose for which general fund moneys of the county may be used, including the acquisition or construction of permanent improvements or to make payments in accordance with section 333.06 or 333.07 of the Revised Code, or in the bond retirement fund for the payment of debt service charges on notes or bonds of the county issued for the acquisition or construction of permanent improvements. The amounts to be deposited in each of such funds shall be determined by the board of county commissioners.

(B) The moneys received by a county levying an additional use tax pursuant to section 5741.023 of the Revised Code shall be deposited in a separate fund, which shall be allocated, distributed, and used in accordance with the resolution adopted under section 5739.026 of the Revised Code. Moneys allocated for the purpose of division (A)(4) of section 5739.026 of the Revised Code shall be transferred to and disbursed from the community improvements fund in the county treasury. Notwithstanding section 135.351 of the Revised Code, if an allocation of moneys to a convention facilities authority or a transit authority is required pursuant to division (C) of section 5739.026 of the Revised Code, the county shall pay and distribute each authority's share of any such moneys to its fiscal officer within five business days of the date of their receipt by the county. If the moneys allocated under such division are not so

paid, the county shall pay to such authority any interest that the county has received or will receive on such moneys that accrues from the date the county received the moneys, together with the principal amount of such moneys.

(C) The funds received by a transit authority levying an additional use tax pursuant to section 5741.022 of the Revised Code shall be deposited in such fund or funds of the transit authority as determined by the legislative authority of the transit authority to be expended for any purpose for which a county transit board or the board of county commissioners operating a county transit system, in the case of a county, or the board of trustees of a regional transit authority, in the case of a regional transit authority, may expend moneys under their control, including the purchase, acquisition, construction, replacement, improvement, extension, or enlargement of permanent improvements or in the bond retirement fund for the payment of debt service charges on notes or bonds of the transit authority.

Effective Date: 10-25-1995; 06-30-2006

5741.04 Collection, reporting and remission of tax by seller.

Every seller required to register with the tax commissioner pursuant to section 5741.17 of the Revised Code who is engaged in the business of selling tangible personal property in this state for storage, use, or other consumption in this state, to which section 5741.02 of the Revised Code applies, or which is subject to a tax levied pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code, shall, and any other seller who is authorized by rule of the tax commissioner to do so may, collect from the consumer the full and exact amount of the tax payable on each such storage, use, or consumption, in the manner and at the times provided as follows:

(A) If the price is, at or prior to 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 seller or the seller's agent, the seller or the seller's agent shall collect the tax with and at the same time as the price.

(B) If the price is otherwise paid or to be paid, the seller or the seller's agent shall, at or prior to the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code to the account of the consumer, which amount shall be collected by the seller from the consumer in addition to the price. Such transaction shall be reported on the return for the period in which the transaction occurred, and the amount of tax applicable to the transaction shall be remitted with the return or, if the consumer is subject to section 5741.121 of the Revised Code, in the manner prescribed by that section. The amount of the tax shall become a legal charge in favor of the seller and against the consumer.

(C) It shall be the obligation of each consumer, as required by section 5741.12 of the Revised Code, to report and pay the taxes levied by sections 5741.021, 5741.022, and 5741.023 of the Revised Code, if applicable, on any storage, use, or other consumption of tangible personal property purchased in this state from a vendor required to be licensed pursuant to section 5739.17 of the Revised Code.

Effective Date: 03-19-1993; 2008 HB562 09-22-2008

5741.05 Seller to determine jurisdiction for which to collect tax.

(A) 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.

Effective Date: 07-01-2003; 04-29-2005; 2007 HB119 06-30-2007; 2008 HB429 01-01-2010

5741.06 Powers and duties of tax commissioner - prepayment of tax.

The tax commissioner shall enforce and administer sections 5741.01 to 5741.22 of the Revised Code, which are hereby declared to be laws which he is required to administer within the meaning of sections 5703.17 to 5703.39 and 5703.45 of the Revised Code. The commissioner may adopt and promulgate such rules as he deems necessary to administer sections 5741.01 to 5741.22 of the Revised Code, and may authorize a seller to prepay the tax levied by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code upon storage, use, or consumption of things produced or distributed by such seller, and he may waive the collection of the tax from the consumer; but no such authority shall be granted or exercised, except upon application to the commissioner and unless he finds, that the conditions of the applicant's business are such as to render impracticable the collection of the tax by the seller in the manner otherwise provided by such sections; nor shall the authority so granted be exercised, nor the seller actually selling such products be exempted from sections 5741.01 to 5741.22 of the Revised Code, by virtue of such an authorization, unless the person to whom such authority is granted prints plainly upon the product sold, or offered for sale, a statement to the effect that the tax has been paid in advance, or otherwise conveys said information to the consumer by written notice. The commissioner may require security to his satisfaction to be filed with him, in such amount as he determines to be sufficient to secure the prepayment under the provisions of this section of the taxes levied by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code in the manner desired.

Effective Date: 02-20-1986

5741.07 [Repealed].

Effective Date: 01-01-1962

5741.08 Notification of change in county or transit authority boundaries.

If modification of a county's jurisdictional boundaries or a transit authority's territory results in a change in the tax rate levied under section 5741.021, 5741.022, or 5741.023 of the Revised Code, the tax commissioner, within thirty days of such change, shall notify any seller that is registered with the central electronic registration system provided for in section 5740.05 of the Revised Code or the seller's certified service provider, if the seller has selected one, of such change. The rate change shall not apply until the first day of a calendar quarter following the expiration of sixty days from the date of notice by the tax commissioner.

Effective Date: 07-01-2003

5741.09 [Repealed].

Effective Date: 01-01-1962

5741.091 [Repealed].

Effective Date: 11-15-1981

5741.10 Refunds.

Refunds of taxes paid pursuant to this chapter by a seller or consumer illegally or erroneously shall be made in the same manner as refunds are made to a vendor or consumer under section 5739.07 of the Revised Code.

Effective Date: 09-06-2002

5741.101 Refund may be applied in satisfaction of debt due state.

The amount of any refund to be certified to the treasurer of state and the director of budget and management pursuant to section 5741.10 of the Revised Code may be reduced by the amount the person claiming the refund is indebted to the state for any tax or fee administered by the tax commissioner that is paid to the state or to the clerk of courts pursuant to section 4505.06 of the Revised Code, or any charge, penalty, or interest arising from such a tax or fee. If the amount refundable is less than the amount of the debt, it may be applied in partial satisfaction of the debt. If the amount refundable is greater than the amount of the debt, the amount remaining after satisfaction of the debt shall be refunded. If the person has more than one such debt, any debt subject to section 5739.33 or division (G) of section 5747.07 of the Revised Code shall be satisfied first. This section applies only to debts that have become final.

Effective Date: 09-29-1997; 2006 HB699 03-29-2007

5741.11 Liability of seller for failure to collect and remit tax.

If any seller who is required or authorized to collect the tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code fails to do so, he shall be liable personally for such amount as he failed to collect. If any seller collects the tax imposed by or pursuant

to any such section and fails to remit the same to the state as prescribed, he shall be personally liable for any amount collected which he failed to remit. The tax commissioner may make an assessment against such seller, based upon any information within his possession. The commissioner shall give to the seller written notice of such assessment. Such notice may be served upon the seller personally or by certified mail.

Effective Date: 02-20-1986

5741.12 Return required by seller or user - payment of tax.

(A) Each seller required by section 5741.17 of the Revised Code to register with the tax commissioner, and any seller authorized by the commissioner to collect the tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code is subject to the same requirements and entitled to the same deductions and discount for prompt payments as are vendors under section 5739.12 of the Revised Code, and the same monetary allowances as are vendors under section 5739.06 of the Revised Code. The powers and duties of the commissioner with respect to returns and tax remittances under this section shall be identical with those prescribed in section 5739.12 of the Revised Code.

(B) Every person storing, using, or consuming tangible personal property or receiving the benefit of a service, the storage, use, consumption, or receipt of which is subject to the tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code, when such tax was not paid to a seller, shall, on or before the twenty-third day of each month, file with the tax commissioner a return for the preceding month in such form as is prescribed by the commissioner, showing such information as the commissioner deems necessary, and shall pay the tax shown on the return to be due. Remittance shall be made payable to the treasurer of state. The commissioner may require consumers to file returns and pay the tax at other than monthly intervals, if the commissioner determines that such filing is necessary for the efficient administration of the tax. If the commissioner determines that a consumer's tax liability is not such as to merit monthly filing, the commissioner may authorize the consumer to file returns and pay tax at less frequent intervals.

Any consumer required to file a return and pay the tax under this section whose payment for any year equals or exceeds the amount shown in division (A) of section 5741.121 of the Revised Code is subject to the accelerated tax payment requirements in divisions (B) and (C) of that section.

(C) Every person storing, using, or consuming a motor vehicle, watercraft, or outboard motor, the ownership of which must be evidenced by certificate of title, shall file the return required by this section and pay the tax due at or prior to the time of filing an application for certificate of title.

Effective Date: 07-01-2003; 2008 HB562 09-22-2008

5741.121 Tax payments by electronic funds transfer.

(A) If the total amount of tax required to be paid by a seller or consumer under section 5741.12 of the Revised Code for any year equals or exceeds seventy-five thousand dollars, the seller or consumer shall remit each monthly tax payment in the second ensuing and each succeeding year on an accelerated basis as prescribed by division (B) of this section.

If a seller's or consumer's tax payment for each of two consecutive years is less than seventy-five thousand dollars, the seller or consumer is relieved of the requirement to remit taxes on an

accelerated basis for the year that next follows the second of the consecutive years in which the tax payment is less than that amount, and is relieved of that requirement for each succeeding year, unless the tax payment in a subsequent year equals or exceeds seventy-five thousand dollars.

The tax commissioner shall notify each seller or consumer required to make accelerated tax payments of the seller's or consumer's obligation to do so and shall maintain an updated list of those sellers and consumers. Failure by the tax commissioner to notify a seller or consumer subject to this section to remit taxes on an accelerated basis does not relieve the seller or consumer of the obligation to remit taxes as provided under division (B) of this section.

(B) Sellers and consumers required by division (A) of this section to make accelerated tax payments shall electronically remit such payments to the tax commissioner, in a manner approved by the commissioner, as follows:

(1) On or before the twenty-third day of each month, a seller or consumer shall remit an amount equal to seventy-five per cent of the anticipated tax liability for that month.

(2) On or before the twenty-third day of each month, a seller shall report the taxes collected and a consumer shall report the taxes due for the previous month and shall remit that amount, less any amounts paid for that month as required by division (B)(1) of this section.

The payment of taxes on an accelerated basis under this section does not affect a seller's or consumer's obligation to file returns and pay the tax shown on the returns to be due as required under section 5741.12 of the Revised Code.

(C) A seller or consumer required by this section to remit taxes on an accelerated basis may apply to the tax commissioner in the manner prescribed by the commissioner to be excused from that requirement. The commissioner may excuse the seller or consumer from remittance on an accelerated basis for good cause shown for the period of time requested by the seller or consumer or for a portion of that period.

(D)(1)(a) If a seller or consumer that is required to remit payments under division (B) of this section fails to make a payment required under division (B)(1) of this section, or makes a payment under division (B)(1) of this section that is less than seventy-five per cent of the actual liability for that month, the commissioner may impose an additional charge not to exceed five per cent of that unpaid amount.

(b) Division (D)(1)(a) of this section does not apply if the seller's or consumer's payment under division (B)(1) of this section is equal to or greater than seventy-five per cent of the seller's or consumer's reported liability for the same month in the immediately preceding calendar year.

(2) Any additional charge imposed under division (D)(1) of this section is in addition to any other penalty or charge imposed under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. An additional charge may be collected by assessment in the manner prescribed by section 5741.13 of the Revised Code. The tax commissioner may waive all or a portion of such a charge and may adopt rules governing such waiver.

Effective Date: 09-26-2003; 2007 HB119 01-01-2008; 2008 HB562 09-22-2008

5741.122 Returns of taxpayers using electronic funds transfer.

(A) If required by the tax commissioner, a person required to make payments under section 5741.121 of the Revised Code shall file all returns and reports electronically. The commissioner may require the person to use the Ohio business gateway, as defined in section 718.051 of the Revised Code, or any other electronic means approved by the commissioner, to file the returns and reports, or to remit the tax, in lieu of the manner prescribed under section 5741.121 of the Revised Code.

(B) A person required under this section to file reports and returns electronically may apply to the tax commissioner to be excused from that requirement. Applications shall be made on a form prescribed by the commissioner. The commissioner may approve the application for good cause.

(C)(1) If a person required to file a report or return electronically under this section fails to do so, the tax commissioner may impose an additional charge not to exceed the following:

(a) For each of the first two failures, five per cent of the amount required to be reported on the report or return;

(b) For the third and any subsequent failure, ten per cent of the amount required to be reported on the report or return.

(2) The charges authorized under division (C)(1) of this section are in addition to any other charge or penalty authorized under this chapter, and shall be considered as revenue arising from taxes imposed under this chapter. An additional charge may be collected by assessment in the manner prescribed by section 5741.13 of the Revised Code. The commissioner may waive all or a portion of such a charge and may adopt rules governing such waiver.

Effective Date: 2007 HB119 01-01-2008; 2008 HB562 09-22-2008

5741.13 Assessment for failure to make return or pay tax.

If any person required by section 5741.12 of the Revised Code to make a return to the tax commissioner fails to make such return at the time required by or under authority of such section, the commissioner may make an assessment against such person, based upon any information within the commissioner's possession. The commissioner shall give to such person written notice of the assessment as provided in section 5703.37 of the Revised Code.

If information in the possession of the commissioner indicates that the tax paid by any consumer is less than that due, the commissioner may audit a representative sample of that consumer's purchases and may issue an assessment based thereon. The commissioner shall make a good faith effort to reach agreement with the consumer on selecting a representative sample.

If information in the possession of the commissioner indicates that the amount required to be collected or paid under this chapter is greater than the amount remitted by the seller, the commissioner may audit a representative sample of the seller's sales to determine the per cent of exempt or taxable transactions or the effective tax rate and may issue an assessment based on the audit. The commissioner shall make a good faith effort to reach agreement with the seller in selecting a representative sample.

Effective Date: 09-06-2002

5741.14 Procedures relating to assessments.

The procedures prescribed by sections 5739.13 to 5739.15 of the Revised Code, including those governing the imposition of penalties and interest, apply to assessments made pursuant to sections 5741.11 and 5741.13 of the Revised Code.

Effective Date: 06-30-1997

5741.15 Inspection of records by tax commissioner.

Every seller having nexus with this state and every person receiving the benefit of services in this state or storing, using, or otherwise consuming in this state tangible personal property subject to the tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code shall keep such records, receipts, invoices, bills of lading, asset ledgers, depreciation schedules, transfer journals, and such primary and secondary records and documents in such form as the tax commissioner requires. Such records and other documents shall be open during business hours to the inspection of the commissioner, and shall be preserved for a period of four years, unless the commissioner consents, in writing, to their destruction within such period, or by order requires that they be kept longer. Persons refusing to provide such records and documents for inspection by the tax commissioner are subject to the penalty imposed under section 5703.19 of the Revised Code.

Effective Date: 07-01-1993

5741.16 Four-year limitation for assessment against seller or consumer - exceptions.

(A) Except as provided in division (B) or (C) of this section, no assessment shall be made or issued against a seller or consumer for any tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period was filed, whichever date is later.

(B) A consumer who provides a fully completed exemption certificate pursuant to division (B) of section 5739.03 or division (E) of section 5741.02 of the Revised Code may be assessed any tax imposed by or pursuant to section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code that results from denial of the claimed exemption within the later of a period allowed by division (A) of this section or one year after the date the certificate was provided.

(C) This section does not bar an assessment:

(1) When the tax commissioner has substantial evidence of amounts of taxes collected by a seller from consumers on purchases, which were not returned to the state by direct remittance;

(2) When the person assessed failed to file a return as required by section 5741.12 of the Revised Code;

(3) When the seller or consumer and the commissioner waive in writing the time limitation.

Effective Date: 02-20-1986; 01-01-2006

5741.17 Registration of sellers with tax commissioner.

(A)(1) Except as otherwise provided in divisions (A)(2), (3), and (4) of this section, every seller of tangible personal property or services who has substantial nexus with this state shall register with the tax commissioner and supply any information concerning his contacts with this state that may be required by the commissioner.

(2) A seller who is licensed as a vendor pursuant to section 5739.17 of the Revised Code shall not be required to register with the commissioner pursuant to this section if all sales to consumers in this state are made under the authority of his vendor's license.

(3) A seller is not required to register under this section if the seller has no contact with this state other than an agency relationship with a person engaged in the business of telemarketing in this state and engaged by the seller exclusively for the purpose of solicitation of customers in other states.

(4) A seller is not required to register under this section if the seller has no contact with this state other than the ownership of property that is located at the facility of a printer with which the seller has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the final printed product is produced.

(B) A seller who does not have substantial nexus with this state may voluntarily register with the commissioner. A seller who voluntarily registers with the commissioner under this section is entitled to the same benefits and is subject to the same duties and requirements as a seller required to be registered with the commissioner under this chapter.

The commissioner shall maintain an alphabetical index of all sellers registered under this chapter and records of the use tax reported and paid. Upon request, this information shall be made available to the treasurer of state.

Effective Date: 07-22-1994

5741.18 [Repealed].

Effective Date: 09-05-2001

5741.19 Prohibition against refusal to pay tax.

No consumer shall refuse to pay the full and exact tax required by section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code, or refuse to comply with sections 5741.01 to 5741.22 of the Revised Code, and the rules of the tax commissioner, or present to the seller a false certificate indicating that the storage, use, or consumption of the thing transferred is not subject to the tax.

Effective Date: 02-20-1986

5741.20 [Repealed].

Effective Date: 01-01-1962

5741.21 Seller to collect tax - prohibition against rebates.

No seller shall fail to collect the full and exact tax as required by section 5741.02, 5741.021, 5741.022, or 5741.023 of the Revised Code, or fail to comply with sections 5741.01 to 5741.22 of the Revised Code, and the rules of the tax commissioner or except as expressly authorized by such sections, refund, remit, or rebate to a consumer, directly or indirectly by whatsoever means, any of the tax, or make in any form of advertising, verbal or otherwise, any statements which might imply that he is absorbing the tax, or paying the tax for the consumer by an adjustment of prices, or selling at a price including the tax, or rebating the tax in any other manner.

Effective Date: 02-20-1986

5741.22 Failure to file return.

No person required by section 5741.12 of the Revised Code to make a return to the tax commissioner shall fail to make such return within the time required, or make any incomplete, false or fraudulent return.

Effective Date: 07-01-1959

5741.23 Right of county or transit authority to levy additional tax not preempted.

The levy of any excise, income, or property tax by the state or by any political subdivision thereof shall not be construed as preempting the power of a county or transit authority to levy an additional use tax pursuant to section 5741.021, 5741.022, or 5741.023 of the Revised Code. No tax levied by a board of county commissioners pursuant to section 5741.022 of the Revised Code shall become effective at any time while a tax levied by the board of trustees of a regional transit authority pursuant to such section is in effect in any part of such county.

Effective Date: 02-20-1986

5741.24 Commissioner may delegate investigation powers - cooperation in investigations and prosecutions.

For purposes of enforcing this chapter, the tax commissioner, in accordance with section 5743.45 of the Revised Code, may delegate any investigation powers of the commissioner to any employee of the department of taxation who has been certified by the Ohio peace officer training commission and who is engaged in the enforcement of this chapter. Upon such a delegation in accordance with that section, the provisions of that section relative to the powers and authority of the employee and the suspension or revocation of the delegation apply. No employee of the department shall divulge any information acquired as a result of any investigation pursuant to this chapter, except as may be required by the commissioner or a court.

The department shall cooperate with the attorney general, local law enforcement officials, and the appropriate agencies of the federal government and other states in the investigation and prosecution of violations of this chapter.

Effective Date: 12-02-1996

5741.25 Failure to file or make payment.

If any corporation, limited liability company, or business trust registered or required to be registered under section 5741.17 of the Revised Code and required to file returns and remit tax due to the state under this chapter fails for any reason to make the filing or payment, any of its employees having control or supervision of or charged with the responsibility of filing returns and making payments, or any of its officers, members, managers, or trustees who are responsible for the execution of the corporation's, limited liability company's, or business trust's fiscal responsibilities, shall be personally liable for the failure. The dissolution, termination, or bankruptcy of a corporation, limited liability company, or business trust shall not discharge a responsible officer's, member's, manager's, employee's, or trustee's liability for a failure of the corporation, limited liability company, or business trust to file returns or remit tax due. The sum due for the liability may be collected by assessment in the manner provided in section 5741.11 or 5741.13 of the Revised Code.

Effective Date: 09-26-2003

5741.99 Penalty.

(A) Whoever violates section 5741.19 or 5741.21 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars for a first offense; for each subsequent offense such person shall, if a corporation, be fined not less than one hundred nor more than five hundred dollars, or if an individual, or a member of a partnership, firm, or association, be fined not less than twenty-five nor more than one hundred dollars, or imprisoned not more than sixty days, or both.

(B) Whoever violates section 5741.22 of the Revised Code shall be fined not more than five hundred dollars.

(C) Whoever violates sections 5741.01 to 5741.22, inclusive, of the Revised Code, or any lawful rule or regulation promulgated by the department of taxation under authority of said sections, for the violation of which no penalty is provided elsewhere, shall be fined not less than twenty-five nor more than one hundred dollars.

Effective Date: 01-01-1962