



## Ohio Revised Code

### Section 5739.012 Taxation of bundled transactions.

Effective: January 1, 2006

Legislation: House Bill 66 - 126th General Assembly

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(A) As used in this section:

(1) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where the products are otherwise distinct and identifiable products and are sold for one non-itemized price. "Bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the consumer of the products included in the transaction.

As used in division (A)(1) of this section:

(a) "Distinct and identifiable products" does not include any of the following:

(i) Packaging, including containers, boxes, sacks, bags, and bottles, and packaging materials, including wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge.

(iii) Items included in the definition of "price" under division (H) of section 5739.01 of the Revised Code.

(b) "One non-itemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documents made available to the consumer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.



(2) "De minimis" means the vendor's or seller's purchase price or sales price of taxable products is ten per cent or less of the total purchase price or sales price of bundled products. Vendors and sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis, and shall use the full term of a service contract to determine if the taxable products are de minimis. Vendors and sellers shall not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(3) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, and the label includes either a "Drug Facts" panel or a statement of the active ingredients with a list of those ingredients contained in the drug.

(B) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is any of the following:

(1) A retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service;

(2) A retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service;

(3) A transaction that includes taxable products and nontaxable products, and the purchase price or sales price of the taxable products is de minimis;

(4) A retail sale of exempt tangible personal property and taxable tangible personal property where the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies, and the vendor's or seller's purchase price or sales price of the taxable tangible personal property is fifty per cent or less of the total purchase price or sales price of the bundled tangible personal property. Vendors and sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty per cent determination for a transaction.



(C) In the case of a bundled transaction that includes telecommunications service, ancillary service, internet access, or audio or video programming service:

(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products shall be subject to tax unless the provider, by reasonable and verifiable standards, can identify the portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(2) If the price is attributable to products that are subject to tax at different tax rates, the total price shall be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

(D) In all other cases of bundled transactions, the taxability of the transaction shall be determined by the true object of the consumer entering into the transaction.