

Bringing It Back to the Basics: Reviewing Common Questions on Ohio's Sales and Use Tax



#### Ohio Automobile Dealer's Association

Bringing It Back to the Basics: Reviewing Common Questions on Ohio's Sales and Use Tax

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• The information presented in this presentation is accurate as of the date of the presentation. Any legislative or legal changes that take place after the date of this presentation may change the accuracy of this content. Additionally, changes to facts and circumstances may impact any answer provided herein. Please contact the Department directly with any questions (Business Tax - (888) 405-4039).



# Agenda

- 1. Nonresidents Sales Tax Issues
- 2. Vehicles brought into Ohio
- 3. Select Sales and Use Tax Exemptions
- 4. Demos, Loaners, and Rental Cars
- 5. Selling/Giving a Motor Vehicle to a Charitable Cause
- 6. Documentary Fees
- 7. IRS Clean Vehicle Credit and Trade-In Credits
- 8. Reporting Sales of Leased Motor Vehicles
- 9. Restrictions on Advertising
- 10. Core Charges



# Nonresidents Sales Tax Issues

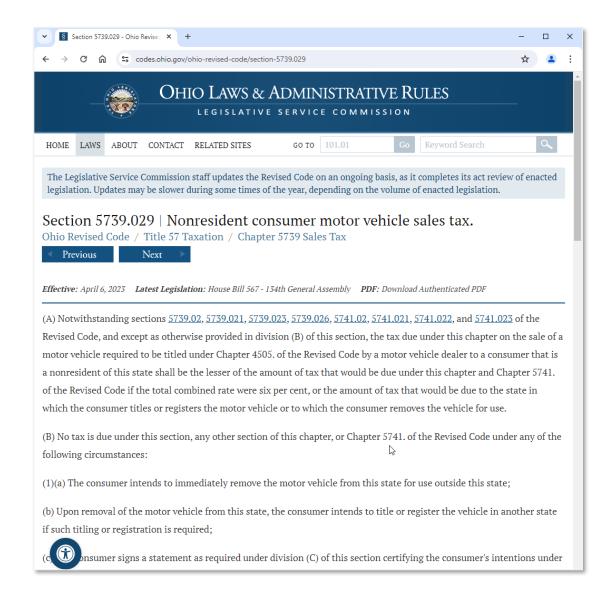


#### Sales to Nonresidents

- R.C. 5739.029 allows the imposition of Ohio sales tax on the purchase of motor vehicles by nonresidents in certain cases.
- Leases to nonresidents are not subject to sales tax.



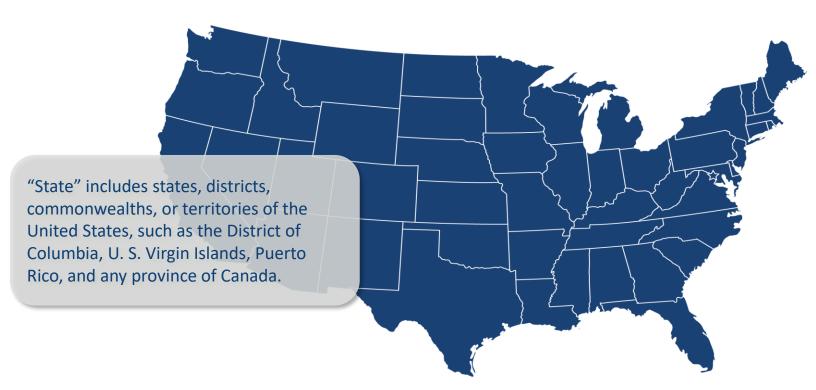
Information Release – Motor Vehicles – Sales of Motor Vehicles to Nonresidents of Ohio



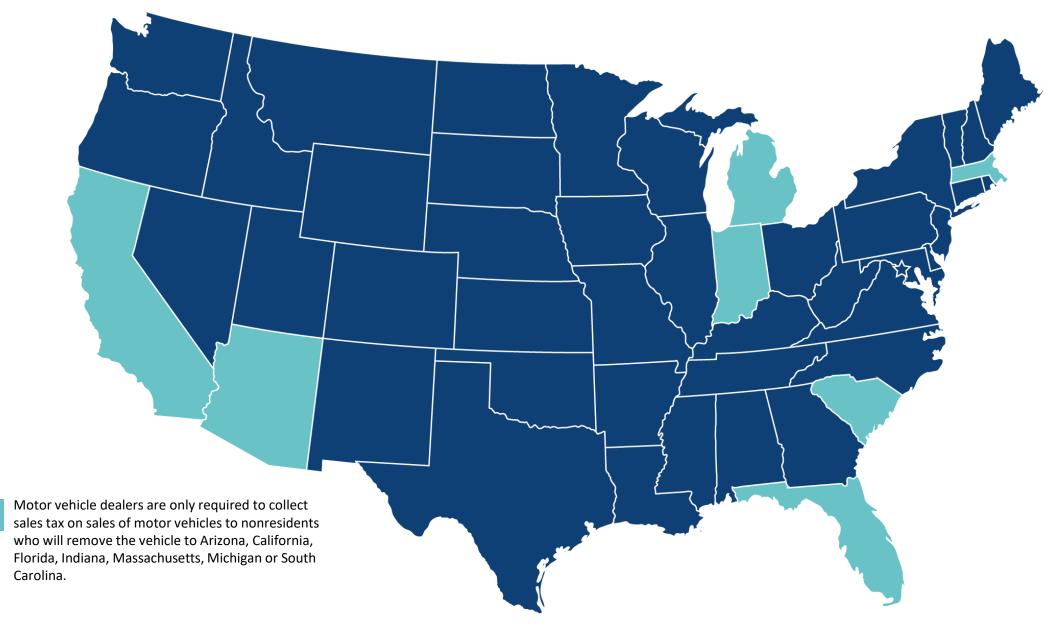


# To What Transactions Does R.C. 5739.029 Apply?

Residents of most other states will continue to be exempt from Ohio sales tax on the purchase of motor vehicles in Ohio.









## How is the Sales Tax Calculated?

- The lesser of:
  - Sales tax due to Ohio; or
  - Amount of sales tax the nonresident would pay in the state of titling, registration or use.
- A trade-in allowance reduces the price of a new or used vehicle to nonresident purchasers if allowed by the state to which the vehicle will be removed.





#### How is the Sales Tax Calculated?

- Calculate the Ohio price of the vehicle under Ohio law, i.e., as you would for a sale to an Ohio resident, accounting for the trade-in deduction if a <u>new</u> vehicle is purchased.
  - The sales tax rate to apply to the Ohio price is **6.0%**.
- Calculate the price in the applicable state accounting for the adjustments in the chart on the next slide, such as a trade-in allowance (if permitted by the state) and apply the sales tax rate of the appropriate state listed in the chart below.
  - Please note that the sales tax rates listed in the chart below are subject to change.
- The lesser of the two amounts must be collected as the sales tax due from the customer.



State	Sales Tax Rate	Trade-In Allowance	Special Provisions
Arizona	5.60%³	Yes –New and Used	
California	7.5%4	No	
Florida	6.00%	Yes- New and Used	
Indiana	7.00%	Yes-New and Used	Nonresident exemption for RVs and trailers with a load capacity of at least 2200 pounds
Massachusetts	6.25%	Yes-New and Used	
Michigan	6.00%	Yes – New and Used <sup>5</sup>	Initially, in 2013, up to \$2,000 of the value of the motor vehicle being traded-in could be used to reduce the price. That trade-in amount increases annually by \$500 beginning on January 1, 2015. However, beginning on January 1, 2019, the trade-in amount is \$5,000. Additionally, beginning on January 1, 2020, that trade-in amount increases from \$500 annually to \$1,000 annually until the amount of \$14,000 is exceeded in 2029. Beginning in 2029, there is no limitation on the trade-in that would reduce the price.
South Carolina	5.00%6	Yes-New and Used	Tax Cap <sup>7</sup> of \$500.00 (Effective for sales on or after July 1, 2017)  Tax Cap of \$300.00 (Effective for sales prior to July 1, 2017)



#### Nonresidents Statements

- Per R.C. 5739.029
  - A nonresident consumer that purchases a motor vehicle shall complete a statement affirming the purchaser's intention to immediately remove the motor vehicle from this state and to title the motor vehicle for use outside this state.
  - A motor vehicle dealer that accepts in good faith the statement presented under this division by a nonresident consumer may rely upon the representations made in the statement.





# Vehicles Brought into Ohio



# Tax Credits for Taxes Legally Paid to Another State

- When it is determined that Ohio use tax is due on the purchase of a motor vehicle from an out-of-state seller, a credit allowance shall be afforded in the amount of sales and/or use tax <u>legally</u> required to be paid to another state or jurisdiction. See R.C. 5741.02(C)(5).
- Barring Arizona, California, Florida, Indiana, Massachusetts, Michigan, and South Carolina, and (in a limited capacity) Kentucky and West Virginia, all states have an exemption from their sales or use tax for a nonresident who removes the vehicle from their state to be titled, registered, or used outside of that state. This means that tax is never "legally paid" in these jurisdictions, and Ohio clerks must collect the full amount of tax due at the time of titling.



#### What Happened in

# Michigan?

- In February 2016 Michigan enacted a revision to their trade-in allowance, which allows for a reduction in the taxable price for all dealers on both new and used motor vehicles. The allowance amount gradually increases over time, with steps in 2013, 2015, and 2019.
  - Beginning on January 1, 2020, the allowable trade-in amount increased from \$500 annually to \$1,000 annually, until that amount exceeds \$14,000 in 2029. Beginning in 2029, there is no limitation on the trade-in that would reduce the price.
- Dealer should calculate the tax due on the price of the motor vehicle less any applicable trade-in allowance.





#### What Happened in

## Indiana?

- Indiana Dept. of Revenue Bulletin #84 provides guidance to Indiana motor vehicle dealers on the appropriate tax rate to impose on sales of motor vehicles that will be removed and titled outside Indiana.
  - The amount the motor vehicle dealer should legally impose on the retail transaction for a motor vehicle that is to be registered in Ohio is the state rate of Ohio (currently 5.75%). Therefore, the amount Ohio can legally give credit for is 5.75%.
  - If a consumer paid an Indiana motor vehicle dealer more than 5.75%, the consumer should request a refund from the motor vehicle dealer or the State of Indiana.

#### But note-

 APVs are not subject to the motor vehicle excise tax in Indiana and therefore are charged the full Indiana sales tax.
 Therefore, the full 7% is given as a credit as taxes paid to another state





#### **Extended Warranties**

# Kentucky & West Virginia

- Kentucky and West Virginia impose sales tax at a rate of 6% on the furnishing of various services, including "extended warranty services".
  - In West Virginia, this rate can increase to 7% if the motor vehicle is purchased in a municipality that has a 1% municipal sales tax.
- In the case of sales to Ohio residents in Kentucky and West Virginia and extended warranties sold in conjunction with sales of motor vehicles, the amount legally required to be collected from an Ohio customer is the 6% Kentucky and West Virginia sales tax rate on the value of the extended warranty only.





# Select Sales & Use Tax Exemptions



#### **Exemption**

## Transportation for Hire

- In order to be exempt under R.C. 5739.02(B)(32), the vehicle must be **primarily** (more than 50%) used in carrying property belonging to others for consideration.
  - For example, trucks used by a company that delivers its own merchandise but has a permit solely for the purpose of picking up back-hauls would be taxable if the back-haul mileage is equal to or less than the delivery mileage.
- A carrier is engaged in highway transportation for hire if it satisfies the following:
  - Has operating authority from the Public Utilities Commission of Ohio ("PUCO") or United States Department of Transportation ("USDOT"); and
  - Transports tangible personal property belonging to others for payment.





#### **Exception**

#### SV

- As you know, UTVs, golf carts, and mini-trucks aren't required to be titled. That means dealers would collect tax directly from the customer at time of purchase.
  - But what happens if the customer later wants to title the property? Does that change how a dealer handles the transaction?
- To cover situations where a purchaser later titles a UTV, golf cart, or mini-truck when a dealer has already collected tax, an exception code (SV) was created for title clerks.
  - This means that the dealers will treat the sale of these items the same for tax purposes, no matter if the customer wants to title them after purchase or not.



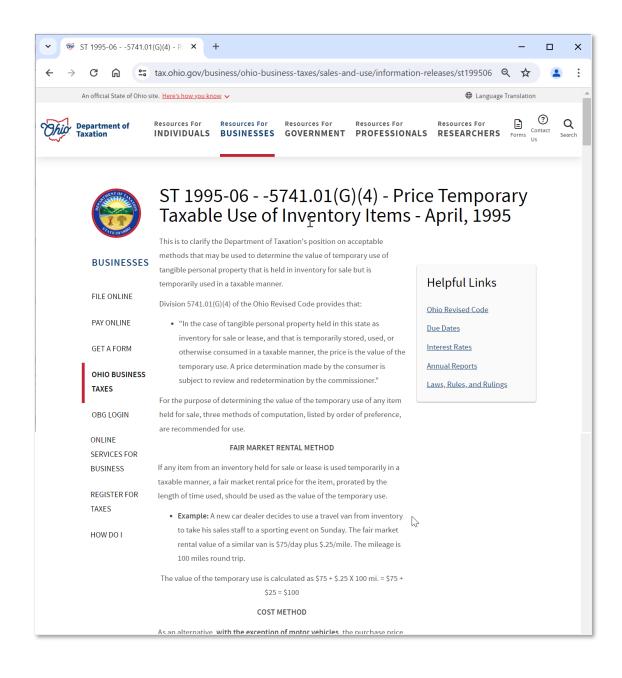


# Demos, Loaners, & Rental Cars



# Demo/Loaner Cars

- Vehicles used as loaners or demos that are pulled from inventory are subject to use tax
  - Customers or dealer sales representatives
    - Not test drive vehicles
  - Taxable use must be determined
  - Department generally allows a fair price for use to be determined by the dealer
  - Suggested calculation methods can be found in Information Release ST 1995-06





#### What is considered a rented motor vehicle?

A rented motor vehicle is a motor vehicle for which the possession is transferred for a fixed or indefinite term for consideration. See R.C. 5739.01(SS).



Exemption (effective 9/29/2015) provided to dealers on certain rental car transactions. R.C. 5739.02(B)(42)(p)

"To provide the thing transferred to the owner or lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced."



If a customer is allowed to use a rented motor vehicle paid for by a motor vehicle dealer while their vehicle is being repaired or serviced at or through the motor vehicle dealer's location and the repair is covered by a provision in a warranty, service contract, maintenance agreement, or other contract or agreement, but the contract or agreement does not specifically provide for the use of a vehicle, does the customer, dealer, or owner of the rented vehicle owe sales or use tax for the rented vehicle?



#### Sooooo.

If all of the following apply, then no sales or use tax is due on the sale of the rental car to the dealer:

- 1. The dealer pays the owner of the rented vehicle for its use;
- 2. The dealer is providing the rented motor vehicle because the customer's motor vehicle is being repaired or serviced pursuant to an agreement of the manufacturer, warrantor, administrator, or other obligor; and
- 3. The dealer receives reimbursement for the cost of the rental vehicle from the manufacturer, warrantor, administrator, or other obligor.



May the manufacturer, warrantor, or other entity reimburse the repairer for the cost of the rented vehicle by means other than a per diem amount?



#### **Answer**

The law does not require any specific type of reimbursement. The repairer will need to retain sufficient evidence to substantiate the amount is being reimbursed specifically for the rental of a motor vehicle in order to qualify for the exemption.



My manufacturer has a program that allows a dealer to provide a new vehicle to a consumer when a repair or service is being done under warranty. I am required to keep the vehicle in "loaner" status for 90 days. The vehicle is given free of charge to the consumer, and the manufacturer pays me a lump sum at the end of 90 days for the use of the vehicle, which I can use to discount the price of the car. Do I pay use tax for the use of the car during the 90-day loaner period?



#### Answer

No tax is owed for use of the vehicle <u>if</u>:

- 1. A loaner vehicle is included in the warranty document given to the customer; or
- 2. A service contract, maintenance agreement, or other contract or agreement between the dealer and the manufacturer states that the customer is entitled to a loaned vehicle while the repair or service is taking place.
- The dealer determines when the vehicle is being used for warranty work or other covered repairs, such as those covered by an extended service contract or maintenance agreement.



# Selling/Giving a Motor Vehicle to a Charitable Cause



#### **Charitable Gifts**

- Motor Vehicle Dealer
  - R.C. 5741.02(C)(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.
  - "Charitable purposes" has the same meaning as in R.C. 5739.02(B)(12).



## **Charitable Gifts**

#### Charity

The charity does not owe Ohio sales or use tax, as he/she has not paid a "price" for the item received.



# **Documentary Fees**



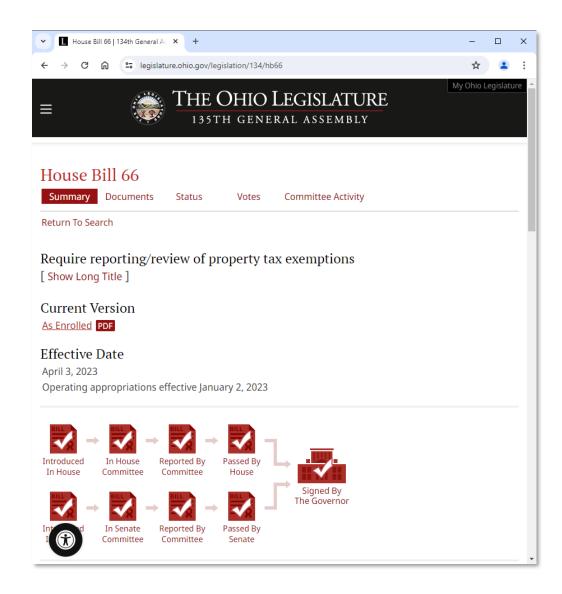
#### Price

- R.C. 5739.01(H)(1)(a)
  - "The total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise."
  - Price is <u>not</u> deducted by:
    - Vendor's cost of property sold;
    - Vendor's cost of materials used, labor or service costs, interest, losses, costs of transportation, taxes imposed on the vendor, and any other expense of the vendor;
    - Charges by the vendor for any services necessary to complete the sale;
    - Delivery and installation charges; or
    - Credit for any trade-in (Used Car Purchase)



# Price - Document Service Fees

- H.B. 66 added an exemption adds a new exemption to <u>5739.02</u> for documentary services charges.
  - This exemption means that these charges are not included in price when calculating tax.
  - This exemption relates to motor vehicle or manufactured housing dealers that may contract for documentary service charges at retail or wholesale for sales and leases of a motor vehicle, or sales of a manufactured or mobile home.





# IRS Clean Vehicle Credit and Trade-In Credits



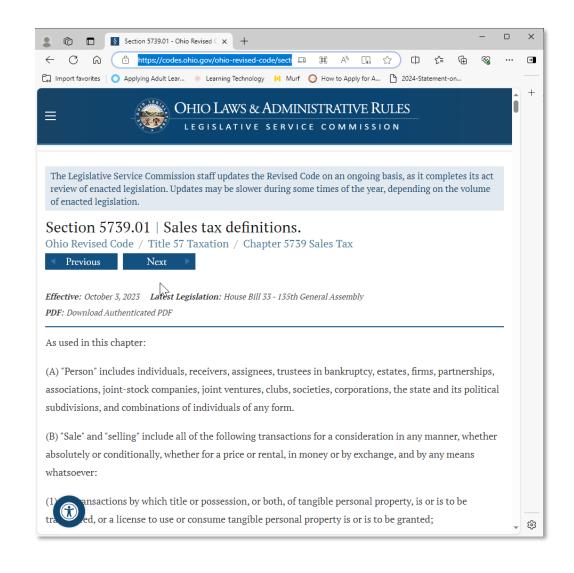
#### Price - IRS Clean Car Credit

- The Inflation Reduction Act of 2022 established a new tax credit for purchases of new or used Electric Vehicles (EVs) or Fuel Cell Vehicles (FCVs). Effective January 1, 2024, this credit can be transferred to the EV seller, thereby reducing the amount the consumer pays out of pocket.
  - Again, price is <u>not</u> reduced if the "price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the consumer, or on a coupon, certificate, or other document presented to the consumer."
- Because the seller is reimbursed for the credit by the IRS, this constitutes consideration received from a third party.
- As such, the credit does not reduce the price of the vehicle being purchased for sales tax purposes and the Clean Vehicle Credit is to be included in the taxable price of the new and used vehicles.



## Special Trade-in Provision

- R.C. 5739.01(H)(2)
  - "In the case of a sale of any <u>new</u> motor vehicle ... in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, <u>reduced by the credit</u> <u>afforded the consumer by the dealer for the motor vehicle received in trade."</u>





#### **Common Trade-in Questions**

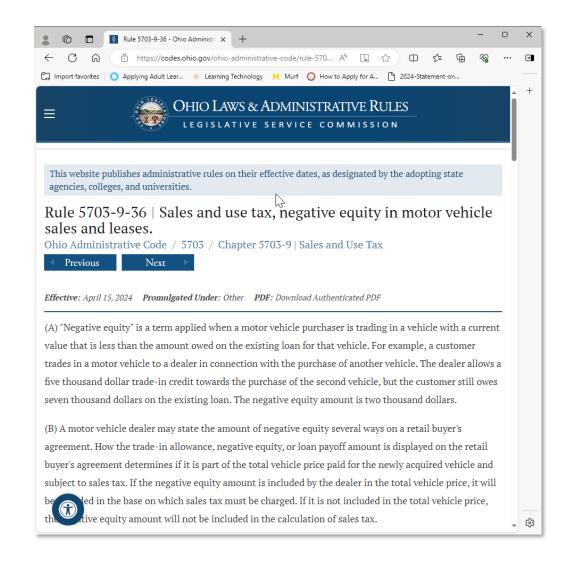
- Can customer trade today, then buy tomorrow?
  - No. The customer must receive the value of the trade simultaneously with the purchase of the new vehicle to receive a trade-in credit.
- Can a customer use someone else's trade in toward the purchase of their own vehicle?
  - Generally, yes. It doesn't matter who owns the car as long as the dealer is giving the credit towards a new car.
- Can a customer trade in more than one vehicle toward the purchase of a new vehicle?
  - Yes. Make sure both trade-ins are documented by the Dealership.





#### **Negative Equity**

- O.A.C. 5703-9-36(A)
  - "A term applied when a motor vehicle purchaser is trading in a vehicle with a current value that is less than the amount owed on the existing loan for that vehicle."
  - For example, Customer trades in a vehicle to a dealer in connection with the purchase of a new vehicle. The dealer allows a \$5,000 trade-in credit, but the customer still owes \$7,000 on the existing loan. The negative equity amount is \$2,000.





#### **Negative Equity**

- How the trade-in allowance, negative equity, or loan payoff amount is displayed on the retail buyer's agreement determines if it is part of the total vehicle price paid and thus subject to sales tax.
- If negative equity is included in the total price, it will be included in the base on which sales tax must be charged
- If negative equity is <u>not</u> included in the total price, the negative equity amount will <u>not</u> be included in the calculation of sales tax.



# Reporting Sales of Leased Motor Vehicles



#### Reporting Sales of Leased Motor Vehicles

- "R.C. 5739.17(D). "As used in this section, "transient vendor" means any person ...
  who leases titled motor vehicles, titled watercraft, or titled outboard motors, who
  effectuates leases that are taxed according to division (A)(2) of section <a href="5739.02">5739.02</a> of
  the Revised Code..."
- Taxation's policy is to allow an out-of-state lessor of motor vehicles, titled watercraft, or titled outboard motors to obtain a seller's use tax account



# Restrictions on Advertising



#### **RESTRICTIONS**

#### Advertising

- No vendor shall (unless expressly authorized) refund, remit, or rebate to a consumer the tax paid.
- No vendors shall make statements that might imply that the vendor is absorbing the tax or paying the tax for the consumer by adjustment of prices.
- R.C. 5739.29





### **Core Charges**



#### Core Charge

- ST 1995-04 CORE CHARGES Updated November 2004
- A "core charge" is part of the selling price.

#### Example

- An auto parts retailer will sell a starter for \$59.95, plus a \$10.00 core charge.
- If the purchaser of the starter returns to the retailer with a used or broken starter, the retailer will pay the purchaser \$10.00.
- In effect, the purchaser has given the retailer \$59.95 in cash (or credit) and something valued at \$10.00 to complete the retail purchase of the starter.
- Therefore, the "price" for calculating sales tax is \$69.95.

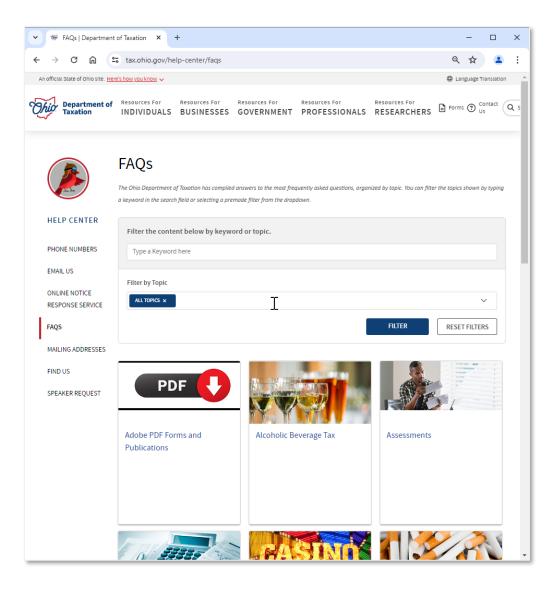




#### **FAQs**

 The Ohio Department of Taxation has various Frequently Asked Questions related to motor vehicles on our website at:







#### Resources



**Tax.ohio.gov - Business Taxes**Sales & Use Tax



Forms2.31"
Filter by Topic – Sales and Use Tax



**FAQs**Filter by Topic – Sales and Use Tax



**Assistance** (888) 405-4039



**Information Release**Motor Vehicles



ORC & OAC
Title 57 & Chapter 5703-9





#### **CONTACT INFORMATION**

Thank You! As always, if you have any questions, please do not hesitate to reach out.

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### QUESTIONS

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