

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**H. B. No. 641**

**Representative Antani**

**Cosponsors: Representatives Becker, Lang, Riedel, Hood**

---

**A BILL**

To amend section 5739.02 of the Revised Code to 1  
exempt from sales and use tax things purchased 2  
by an interstate logistics business and used 3  
primarily to move completed manufactured 4  
products to the point from which they are 5  
shipped from a manufacturing facility and 6  
related power sources. 7

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

**Section 1.** That section 5739.02 of the Revised Code be 8  
amended to read as follows: 9

**Sec. 5739.02.** For the purpose of providing revenue with 10  
which to meet the needs of the state, for the use of the general 11  
revenue fund of the state, for the purpose of securing a 12  
thorough and efficient system of common schools throughout the 13  
state, for the purpose of affording revenues, in addition to 14  
those from general property taxes, permitted under 15  
constitutional limitations, and from other sources, for the 16  
support of local governmental functions, and for the purpose of 17  
reimbursing the state for the expense of administering this 18

chapter, an excise tax is hereby levied on each retail sale made 19  
in this state. 20

(A) (1) The tax shall be collected as provided in section 21  
5739.025 of the Revised Code. The rate of the tax shall be five 22  
and three-fourths per cent. The tax applies and is collectible 23  
when the sale is made, regardless of the time when the price is 24  
paid or delivered. 25

(2) In the case of the lease or rental, with a fixed term 26  
of more than thirty days or an indefinite term with a minimum 27  
period of more than thirty days, of any motor vehicles designed 28  
by the manufacturer to carry a load of not more than one ton, 29  
watercraft, outboard motor, or aircraft, or of any tangible 30  
personal property, other than motor vehicles designed by the 31  
manufacturer to carry a load of more than one ton, to be used by 32  
the lessee or renter primarily for business purposes, the tax 33  
shall be collected by the vendor at the time the lease or rental 34  
is consummated and shall be calculated by the vendor on the 35  
basis of the total amount to be paid by the lessee or renter 36  
under the lease agreement. If the total amount of the 37  
consideration for the lease or rental includes amounts that are 38  
not calculated at the time the lease or rental is executed, the 39  
tax shall be calculated and collected by the vendor at the time 40  
such amounts are billed to the lessee or renter. In the case of 41  
an open-end lease or rental, the tax shall be calculated by the 42  
vendor on the basis of the total amount to be paid during the 43  
initial fixed term of the lease or rental, and for each 44  
subsequent renewal period as it comes due. As used in this 45  
division, "motor vehicle" has the same meaning as in section 46  
4501.01 of the Revised Code, and "watercraft" includes an 47  
outdrive unit attached to the watercraft. 48

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

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

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers and sales or transfers of	78
magazines distributed as controlled circulation publications;	79
(5) The furnishing, preparing, or serving of meals without	80
charge by an employer to an employee provided the employer	81
records the meals as part compensation for services performed or	82
work done;	83
(6) Sales of motor fuel upon receipt, use, distribution,	84
or sale of which in this state a tax is imposed by the law of	85
this state, but this exemption shall not apply to the sale of	86
motor fuel on which a refund of the tax is allowable under	87
division (A) of section 5735.14 of the Revised Code; and the tax	88
commissioner may deduct the amount of tax levied by this section	89
applicable to the price of motor fuel when granting a refund of	90
motor fuel tax pursuant to division (A) of section 5735.14 of	91
the Revised Code and shall cause the amount deducted to be paid	92
into the general revenue fund of this state;	93
(7) Sales of natural gas by a natural gas company or	94
municipal gas utility, of water by a water-works company, or of	95
steam by a heating company, if in each case the thing sold is	96
delivered to consumers through pipes or conduits, and all sales	97
of communications services by a telegraph company, all terms as	98
defined in section 5727.01 of the Revised Code, and sales of	99
electricity delivered through wires;	100
(8) Casual sales by a person, or auctioneer employed	101
directly by the person to conduct such sales, except as to such	102
sales of motor vehicles, watercraft or outboard motors required	103
to be titled under section 1548.06 of the Revised Code,	104
watercraft documented with the United States coast guard,	105
snowmobiles, and all-purpose vehicles as defined in section	106
4519.01 of the Revised Code;	107

(9) (a) Sales of services or tangible personal property, 108  
other than motor vehicles, mobile homes, and manufactured homes, 109  
by churches, organizations exempt from taxation under section 110  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 111  
organizations operated exclusively for charitable purposes as 112  
defined in division (B) (12) of this section, provided that the 113  
number of days on which such tangible personal property or 114  
services, other than items never subject to the tax, are sold 115  
does not exceed six in any calendar year, except as otherwise 116  
provided in division (B) (9) (b) of this section. If the number of 117  
days on which such sales are made exceeds six in any calendar 118  
year, the church or organization shall be considered to be 119  
engaged in business and all subsequent sales by it shall be 120  
subject to the tax. In counting the number of days, all sales by 121  
groups within a church or within an organization shall be 122  
considered to be sales of that church or organization. 123

(b) The limitation on the number of days on which tax- 124  
exempt sales may be made by a church or organization under 125  
division (B) (9) (a) of this section does not apply to sales made 126  
by student clubs and other groups of students of a primary or 127  
secondary school, or a parent-teacher association, booster 128  
group, or similar organization that raises money to support or 129  
fund curricular or extracurricular activities of a primary or 130  
secondary school. 131

(c) Divisions (B) (9) (a) and (b) of this section do not 132  
apply to sales by a noncommercial educational radio or 133  
television broadcasting station. 134

(10) Sales not within the taxing power of this state under 135  
the Constitution or laws of the United States or the 136  
Constitution of this state; 137

(11) Except for transactions that are sales under division 138  
(B) (3) (r) of section 5739.01 of the Revised Code, the 139  
transportation of persons or property, unless the transportation 140  
is by a private investigation and security service; 141

(12) Sales of tangible personal property or services to 142  
churches, to organizations exempt from taxation under section 143  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 144  
nonprofit organizations operated exclusively for charitable 145  
purposes in this state, no part of the net income of which 146  
inures to the benefit of any private shareholder or individual, 147  
and no substantial part of the activities of which consists of 148  
carrying on propaganda or otherwise attempting to influence 149  
legislation; sales to offices administering one or more homes 150  
for the aged or one or more hospital facilities exempt under 151  
section 140.08 of the Revised Code; and sales to organizations 152  
described in division (D) of section 5709.12 of the Revised 153  
Code. 154

"Charitable purposes" means the relief of poverty; the 155  
improvement of health through the alleviation of illness, 156  
disease, or injury; the operation of an organization exclusively 157  
for the provision of professional, laundry, printing, and 158  
purchasing services to hospitals or charitable institutions; the 159  
operation of a home for the aged, as defined in section 5701.13 160  
of the Revised Code; the operation of a radio or television 161  
broadcasting station that is licensed by the federal 162  
communications commission as a noncommercial educational radio 163  
or television station; the operation of a nonprofit animal 164  
adoption service or a county humane society; the promotion of 165  
education by an institution of learning that maintains a faculty 166  
of qualified instructors, teaches regular continuous courses of 167  
study, and confers a recognized diploma upon completion of a 168

specific curriculum; the operation of a parent-teacher 169  
association, booster group, or similar organization primarily 170  
engaged in the promotion and support of the curricular or 171  
extracurricular activities of a primary or secondary school; the 172  
operation of a community or area center in which presentations 173  
in music, dramatics, the arts, and related fields are made in 174  
order to foster public interest and education therein; the 175  
production of performances in music, dramatics, and the arts; or 176  
the promotion of education by an organization engaged in 177  
carrying on research in, or the dissemination of, scientific and 178  
technological knowledge and information primarily for the 179  
public. 180

Nothing in this division shall be deemed to exempt sales 181  
to any organization for use in the operation or carrying on of a 182  
trade or business, or sales to a home for the aged for use in 183  
the operation of independent living facilities as defined in 184  
division (A) of section 5709.12 of the Revised Code. 185

(13) Building and construction materials and services sold 186  
to construction contractors for incorporation into a structure 187  
or improvement to real property under a construction contract 188  
with this state or a political subdivision of this state, or 189  
with the United States government or any of its agencies; 190  
building and construction materials and services sold to 191  
construction contractors for incorporation into a structure or 192  
improvement to real property that are accepted for ownership by 193  
this state or any of its political subdivisions, or by the 194  
United States government or any of its agencies at the time of 195  
completion of the structures or improvements; building and 196  
construction materials sold to construction contractors for 197  
incorporation into a horticulture structure or livestock 198  
structure for a person engaged in the business of horticulture 199

or producing livestock; building materials and services sold to 200  
a construction contractor for incorporation into a house of 201  
public worship or religious education, or a building used 202  
exclusively for charitable purposes under a construction 203  
contract with an organization whose purpose is as described in 204  
division (B) (12) of this section; building materials and 205  
services sold to a construction contractor for incorporation 206  
into a building under a construction contract with an 207  
organization exempt from taxation under section 501(c) (3) of the 208  
Internal Revenue Code of 1986 when the building is to be used 209  
exclusively for the organization's exempt purposes; building and 210  
construction materials sold for incorporation into the original 211  
construction of a sports facility under section 307.696 of the 212  
Revised Code; building and construction materials and services 213  
sold to a construction contractor for incorporation into real 214  
property outside this state if such materials and services, when 215  
sold to a construction contractor in the state in which the real 216  
property is located for incorporation into real property in that 217  
state, would be exempt from a tax on sales levied by that state; 218  
building and construction materials for incorporation into a 219  
transportation facility pursuant to a public-private agreement 220  
entered into under sections 5501.70 to 5501.83 of the Revised 221  
Code; and, until one calendar year after the construction of a 222  
convention center that qualifies for property tax exemption 223  
under section 5709.084 of the Revised Code is completed, 224  
building and construction materials and services sold to a 225  
construction contractor for incorporation into the real property 226  
comprising that convention center; 227

(14) Sales of ships or vessels or rail rolling stock used 228  
or to be used principally in interstate or foreign commerce, and 229  
repairs, alterations, fuel, and lubricants for such ships or 230

vessels or rail rolling stock;	231
(15) Sales to persons primarily engaged in any of the	232
activities mentioned in division (B) (42) (a), (g), or (h) of this	233
section, to persons engaged in making retail sales, or to	234
persons who purchase for sale from a manufacturer tangible	235
personal property that was produced by the manufacturer in	236
accordance with specific designs provided by the purchaser, of	237
packages, including material, labels, and parts for packages,	238
and of machinery, equipment, and material for use primarily in	239
packaging tangible personal property produced for sale,	240
including any machinery, equipment, and supplies used to make	241
labels or packages, to prepare packages or products for	242
labeling, or to label packages or products, by or on the order	243
of the person doing the packaging, or sold at retail. "Packages"	244
includes bags, baskets, cartons, crates, boxes, cans, bottles,	245
bindings, wrappings, and other similar devices and containers,	246
but does not include motor vehicles or bulk tanks, trailers, or	247
similar devices attached to motor vehicles. "Packaging" means	248
placing in a package. Division (B) (15) of this section does not	249
apply to persons engaged in highway transportation for hire.	250
(16) Sales of food to persons using supplemental nutrition	251
assistance program benefits to purchase the food. As used in	252
this division, "food" has the same meaning as in 7 U.S.C. 2012	253
and federal regulations adopted pursuant to the Food and	254
Nutrition Act of 2008.	255
(17) Sales to persons engaged in farming, agriculture,	256
horticulture, or floriculture, of tangible personal property for	257
use or consumption primarily in the production by farming,	258
agriculture, horticulture, or floriculture of other tangible	259
personal property for use or consumption primarily in the	260

production of tangible personal property for sale by farming, 261  
agriculture, horticulture, or floriculture; or material and 262  
parts for incorporation into any such tangible personal property 263  
for use or consumption in production; and of tangible personal 264  
property for such use or consumption in the conditioning or 265  
holding of products produced by and for such use, consumption, 266  
or sale by persons engaged in farming, agriculture, 267  
horticulture, or floriculture, except where such property is 268  
incorporated into real property; 269

(18) Sales of drugs for a human being that may be 270  
dispensed only pursuant to a prescription; insulin as recognized 271  
in the official United States pharmacopoeia; urine and blood 272  
testing materials when used by diabetics or persons with 273  
hypoglycemia to test for glucose or acetone; hypodermic syringes 274  
and needles when used by diabetics for insulin injections; 275  
epoetin alfa when purchased for use in the treatment of persons 276  
with medical disease; hospital beds when purchased by hospitals, 277  
nursing homes, or other medical facilities; and medical oxygen 278  
and medical oxygen-dispensing equipment when purchased by 279  
hospitals, nursing homes, or other medical facilities; 280

(19) Sales of prosthetic devices, durable medical 281  
equipment for home use, or mobility enhancing equipment, when 282  
made pursuant to a prescription and when such devices or 283  
equipment are for use by a human being. 284

(20) Sales of emergency and fire protection vehicles and 285  
equipment to nonprofit organizations for use solely in providing 286  
fire protection and emergency services, including trauma care 287  
and emergency medical services, for political subdivisions of 288  
the state; 289

(21) Sales of tangible personal property manufactured in 290

this state, if sold by the manufacturer in this state to a 291  
retailer for use in the retail business of the retailer outside 292  
of this state and if possession is taken from the manufacturer 293  
by the purchaser within this state for the sole purpose of 294  
immediately removing the same from this state in a vehicle owned 295  
by the purchaser; 296

(22) Sales of services provided by the state or any of its 297  
political subdivisions, agencies, instrumentalities, 298  
institutions, or authorities, or by governmental entities of the 299  
state or any of its political subdivisions, agencies, 300  
instrumentalities, institutions, or authorities; 301

(23) Sales of motor vehicles to nonresidents of this state 302  
under the circumstances described in division (B) of section 303  
5739.029 of the Revised Code; 304

(24) Sales to persons engaged in the preparation of eggs 305  
for sale of tangible personal property used or consumed directly 306  
in such preparation, including such tangible personal property 307  
used for cleaning, sanitizing, preserving, grading, sorting, and 308  
classifying by size; packages, including material and parts for 309  
packages, and machinery, equipment, and material for use in 310  
packaging eggs for sale; and handling and transportation 311  
equipment and parts therefor, except motor vehicles licensed to 312  
operate on public highways, used in intraplant or interplant 313  
transfers or shipment of eggs in the process of preparation for 314  
sale, when the plant or plants within or between which such 315  
transfers or shipments occur are operated by the same person. 316  
"Packages" includes containers, cases, baskets, flats, fillers, 317  
filler flats, cartons, closure materials, labels, and labeling 318  
materials, and "packaging" means placing therein. 319

(25) (a) Sales of water to a consumer for residential use; 320

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	321 322 323 324
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	325 326
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	327 328 329 330
(a) To prepare food for human consumption for sale;	331
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	332 333 334 335
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	336 337
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	338 339
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	340 341 342 343
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	344 345 346
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the	347 348

Revised Code;	349
(32) The sale, lease, repair, and maintenance of, parts	350
for, or items attached to or incorporated in, motor vehicles	351
that are primarily used for transporting tangible personal	352
property belonging to others by a person engaged in highway	353
transportation for hire, except for packages and packaging used	354
for the transportation of tangible personal property;	355
(33) Sales to the state headquarters of any veterans'	356
organization in this state that is either incorporated and	357
issued a charter by the congress of the United States or is	358
recognized by the United States veterans administration, for use	359
by the headquarters;	360
(34) Sales to a telecommunications service vendor, mobile	361
telecommunications service vendor, or satellite broadcasting	362
service vendor of tangible personal property and services used	363
directly and primarily in transmitting, receiving, switching, or	364
recording any interactive, one- or two-way electromagnetic	365
communications, including voice, image, data, and information,	366
through the use of any medium, including, but not limited to,	367
poles, wires, cables, switching equipment, computers, and record	368
storage devices and media, and component parts for the tangible	369
personal property. The exemption provided in this division shall	370
be in lieu of all other exemptions under division (B) (42) (a) or	371
(n) of this section to which the vendor may otherwise be	372
entitled, based upon the use of the thing purchased in providing	373
the telecommunications, mobile telecommunications, or satellite	374
broadcasting service.	375
(35) (a) Sales where the purpose of the consumer is to use	376
or consume the things transferred in making retail sales and	377
consisting of newspaper inserts, catalogues, coupons, flyers,	378

gift certificates, or other advertising material that prices and	379
describes tangible personal property offered for retail sale.	380
(b) Sales to direct marketing vendors of preliminary	381
materials such as photographs, artwork, and typesetting that	382
will be used in printing advertising material; and of printed	383
matter that offers free merchandise or chances to win sweepstake	384
prizes and that is mailed to potential customers with	385
advertising material described in division (B) (35) (a) of this	386
section;	387
(c) Sales of equipment such as telephones, computers,	388
facsimile machines, and similar tangible personal property	389
primarily used to accept orders for direct marketing retail	390
sales.	391
(d) Sales of automatic food vending machines that preserve	392
food with a shelf life of forty-five days or less by	393
refrigeration and dispense it to the consumer.	394
For purposes of division (B) (35) of this section, "direct	395
marketing" means the method of selling where consumers order	396
tangible personal property by United States mail, delivery	397
service, or telecommunication and the vendor delivers or ships	398
the tangible personal property sold to the consumer from a	399
warehouse, catalogue distribution center, or similar fulfillment	400
facility by means of the United States mail, delivery service,	401
or common carrier.	402
(36) Sales to a person engaged in the business of	403
horticulture or producing livestock of materials to be	404
incorporated into a horticulture structure or livestock	405
structure;	406
(37) Sales of personal computers, computer monitors,	407

computer keyboards, modems, and other peripheral computer	408
equipment to an individual who is licensed or certified to teach	409
in an elementary or a secondary school in this state for use by	410
that individual in preparation for teaching elementary or	411
secondary school students;	412
(38) Sales to a professional racing team of any of the	413
following:	414
(a) Motor racing vehicles;	415
(b) Repair services for motor racing vehicles;	416
(c) Items of property that are attached to or incorporated	417
in motor racing vehicles, including engines, chassis, and all	418
other components of the vehicles, and all spare, replacement,	419
and rebuilt parts or components of the vehicles; except not	420
including tires, consumable fluids, paint, and accessories	421
consisting of instrumentation sensors and related items added to	422
the vehicle to collect and transmit data by means of telemetry	423
and other forms of communication.	424
(39) Sales of used manufactured homes and used mobile	425
homes, as defined in section 5739.0210 of the Revised Code, made	426
on or after January 1, 2000;	427
(40) Sales of tangible personal property and services to a	428
provider of electricity used or consumed directly and primarily	429
in generating, transmitting, or distributing electricity for use	430
by others, including property that is or is to be incorporated	431
into and will become a part of the consumer's production,	432
transmission, or distribution system and that retains its	433
classification as tangible personal property after	434
incorporation; fuel or power used in the production,	435
transmission, or distribution of electricity; energy conversion	436

equipment as defined in section 5727.01 of the Revised Code; and 437  
tangible personal property and services used in the repair and 438  
maintenance of the production, transmission, or distribution 439  
system, including only those motor vehicles as are specially 440  
designed and equipped for such use. The exemption provided in 441  
this division shall be in lieu of all other exemptions in 442  
division (B) (42) (a) or (n) of this section to which a provider 443  
of electricity may otherwise be entitled based on the use of the 444  
tangible personal property or service purchased in generating, 445  
transmitting, or distributing electricity. 446

(41) Sales to a person providing services under division 447  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 448  
personal property and services used directly and primarily in 449  
providing taxable services under that section. 450

(42) Sales where the purpose of the purchaser is to do any 451  
of the following: 452

(a) To incorporate the thing transferred as a material or 453  
a part into tangible personal property to be produced for sale 454  
by manufacturing, assembling, processing, or refining; or to use 455  
or consume the thing transferred directly in producing tangible 456  
personal property for sale by mining, including, without 457  
limitation, the extraction from the earth of all substances that 458  
are classed geologically as minerals, production of crude oil 459  
and natural gas, or directly in the rendition of a public 460  
utility service, except that the sales tax levied by this 461  
section shall be collected upon all meals, drinks, and food for 462  
human consumption sold when transporting persons. Persons 463  
engaged in rendering services in the exploration for, and 464  
production of, crude oil and natural gas for others are deemed 465  
engaged directly in the exploration for, and production of, 466

crude oil and natural gas. This paragraph does not exempt from 467  
"retail sale" or "sales at retail" the sale of tangible personal 468  
property that is to be incorporated into a structure or 469  
improvement to real property. 470

(b) To hold the thing transferred as security for the 471  
performance of an obligation of the vendor; 472

(c) To resell, hold, use, or consume the thing transferred 473  
as evidence of a contract of insurance; 474

(d) To use or consume the thing directly in commercial 475  
fishing; 476

(e) To incorporate the thing transferred as a material or 477  
a part into, or to use or consume the thing transferred directly 478  
in the production of, magazines distributed as controlled 479  
circulation publications; 480

(f) To use or consume the thing transferred in the 481  
production and preparation in suitable condition for market and 482  
sale of printed, imprinted, overprinted, lithographic, 483  
multilithic, blueprinted, photostatic, or other productions or 484  
reproductions of written or graphic matter; 485

(g) To use the thing transferred, as described in section 486  
5739.011 of the Revised Code, primarily in a manufacturing 487  
operation to produce tangible personal property for sale; 488

(h) To use the benefit of a warranty, maintenance or 489  
service contract, or similar agreement, as described in division 490  
(B) (7) of section 5739.01 of the Revised Code, to repair or 491  
maintain tangible personal property, if all of the property that 492  
is the subject of the warranty, contract, or agreement would not 493  
be subject to the tax imposed by this section; 494

(i) To use the thing transferred as qualified research and development equipment;	495 496
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.	497 498 499 500 501 502 503 504 505 506 507 508 509
(k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B) (7) of section 5739.01 of the Revised Code;	510 511 512 513 514 515 516
(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;	517 518
(m) To use tangible personal property to perform a service listed in division (B) (3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;	519 520 521 522 523

(n) To use or consume the thing transferred primarily in producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing;

(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.

As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.

(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.

(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.	553 554 555 556 557 558
(45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.	559 560 561 562 563 564 565 566 567 568
(46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of section 5739.01 of the Revised Code.	569 570 571 572
(47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.	573 574 575
(48) (a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;	576 577 578 579 580 581

(b) As used in division (B) (48) (a) of this section:	582
(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.	583 584 585 586 587
(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B) (48) of this section after execution of the tax credit agreement by the tax credit authority.	588 589 590 591 592 593 594 595 596 597
(c) Division (B) (48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.	598 599 600 601
(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B) (49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.	602 603 604 605 606 607 608 609
(50) Sales of full flight simulators that are used for	610

pilot or flight-crew training, sales of repair or replacement 611  
parts or components, and sales of repair or maintenance services 612  
for such full flight simulators. "Full flight simulator" means a 613  
replica of a specific type, or make, model, and series of 614  
aircraft cockpit. It includes the assemblage of equipment and 615  
computer programs necessary to represent aircraft operations in 616  
ground and flight conditions, a visual system providing an out- 617  
of-the-cockpit view, and a system that provides cues at least 618  
equivalent to those of a three-degree-of-freedom motion system, 619  
and has the full range of capabilities of the systems installed 620  
in the device as described in appendices A and B of part 60 of 621  
chapter 1 of title 14 of the Code of Federal Regulations. 622

(51) Any transfer or lease of tangible personal property 623  
between the state and JobsOhio in accordance with section 624  
4313.02 of the Revised Code. 625

(52) (a) Sales to a qualifying corporation. 626

(b) As used in division (B) (52) of this section: 627

(i) "Qualifying corporation" means a nonprofit corporation 628  
organized in this state that leases from an eligible county 629  
land, buildings, structures, fixtures, and improvements to the 630  
land that are part of or used in a public recreational facility 631  
used by a major league professional athletic team or a class A 632  
to class AAA minor league affiliate of a major league 633  
professional athletic team for a significant portion of the 634  
team's home schedule, provided the following apply: 635

(I) The facility is leased from the eligible county 636  
pursuant to a lease that requires substantially all of the 637  
revenue from the operation of the business or activity conducted 638  
by the nonprofit corporation at the facility in excess of 639

operating costs, capital expenditures, and reserves to be paid 640  
to the eligible county at least once per calendar year. 641

(II) Upon dissolution and liquidation of the nonprofit 642  
corporation, all of its net assets are distributable to the 643  
board of commissioners of the eligible county from which the 644  
corporation leases the facility. 645

(ii) "Eligible county" has the same meaning as in section 646  
307.695 of the Revised Code. 647

(53) Sales to or by a cable service provider, video 648  
service provider, or radio or television broadcast station 649  
regulated by the federal government of cable service or 650  
programming, video service or programming, audio service or 651  
programming, or electronically transferred digital audiovisual 652  
or audio work. As used in division (B) (53) of this section, 653  
"cable service" and "cable service provider" have the same 654  
meanings as in section 1332.01 of the Revised Code, and "video 655  
service," "video service provider," and "video programming" have 656  
the same meanings as in section 1332.21 of the Revised Code. 657

(54) Sales of investment metal bullion and investment 658  
coins. "Investment metal bullion" means any bullion described in 659  
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 660  
whether that bullion is in the physical possession of a trustee. 661  
"Investment coin" means any coin composed primarily of gold, 662  
silver, platinum, or palladium. 663

(55) Sales of a digital audio work electronically 664  
transferred for delivery through use of a machine, such as a 665  
juke box, that does all of the following: 666

(a) Accepts direct payments to operate; 667

(b) Automatically plays a selected digital audio work for 668

a single play upon receipt of a payment described in division 669  
(B) (55) (a) of this section; 670

(c) Operates exclusively for the purpose of playing 671  
digital audio works in a commercial establishment. 672

(56) (a) Sales of tangible personal property to a 673  
qualifying business used primarily by that business for either 674  
of the following: 675

(i) Transporting completed manufactured products from the 676  
manufacturing facility in which those products were manufactured 677  
to a place from which those products will be transported from 678  
that facility; 679

(ii) Powering or charging tangible personal property used 680  
as described in division (B) (56) (a) (i) of this section. 681

(b) As used in division (B) (56) of this section: 682

(i) "Qualifying business" means a person that is 683  
classified as being in the transportation and warehousing sector 684  
by the north American industrial classification system and that 685  
is primarily engaged in the business of transporting tangible 686  
personal property in trucks owned and operated by the person to 687  
destinations outside this state. 688

(ii) "Truck" has the same meaning as in section 4501.01 of 689  
the Revised Code. 690

(iii) "Completed product" and "manufacturing facility" 691  
have the same meanings as in section 5739.011 of the Revised 692  
Code. 693

(C) For the purpose of the proper administration of this 694  
chapter, and to prevent the evasion of the tax, it is presumed 695  
that all sales made in this state are subject to the tax until 696

the contrary is established. 697

(D) The levy of this tax on retail sales of recreation and 698  
sports club service shall not prevent a municipal corporation 699  
from levying any tax on recreation and sports club dues or on 700  
any income generated by recreation and sports club dues. 701

(E) The tax collected by the vendor from the consumer 702  
under this chapter is not part of the price, but is a tax 703  
collection for the benefit of the state, and of counties levying 704  
an additional sales tax pursuant to section 5739.021 or 5739.026 705  
of the Revised Code and of transit authorities levying an 706  
additional sales tax pursuant to section 5739.023 of the Revised 707  
Code. Except for the discount authorized under section 5739.12 708  
of the Revised Code and the effects of any rounding pursuant to 709  
section 5703.055 of the Revised Code, no person other than the 710  
state or such a county or transit authority shall derive any 711  
benefit from the collection or payment of the tax levied by this 712  
section or section 5739.021, 5739.023, or 5739.026 of the 713  
Revised Code. 714

**Section 2.** That existing section 5739.02 of the Revised 715  
Code is hereby repealed. 716

**Section 3.** The amendment by this act of section 5739.02 of 717  
the Revised Code applies on and after January 1, 2019. 718