

Am. Sub. H.B. 62
As Passed by the Senate
TAXCD9

_____ moved to amend as follows:

In line 13 of the title, after "5735.27," insert "5739.02," 1

In line 40, after "5735.27," insert "5739.02," 2

After line 9229, insert: 3

"**Sec. 5739.02.** For the purpose of providing revenue with 4
which to meet the needs of the state, for the use of the general 5
revenue fund of the state, for the purpose of securing a thorough 6
and efficient system of common schools throughout the state, for 7
the purpose of affording revenues, in addition to those from 8
general property taxes, permitted under constitutional 9
limitations, and from other sources, for the support of local 10
governmental functions, and for the purpose of reimbursing the 11
state for the expense of administering this chapter, an excise tax 12
is hereby levied on each retail sale made in this state. 13

(A)(1) The tax shall be collected as provided in section 14
5739.025 of the Revised Code. The rate of the tax shall be five 15
and three-fourths per cent. The tax applies and is collectible 16
when the sale is made, regardless of the time when the price is 17
paid or delivered. 18

(2) In the case of the lease or rental, with a fixed term of 19

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
vendor at the time the lease or rental is consummated and shall be
calculated by the vendor on the basis of the total amount to be
paid by the lessee or renter under the lease 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 vendor
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 vendor 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.

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 magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6)(a) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner

may deduct the amount of tax levied by this section applicable to 80
the price of motor fuel when granting a refund of motor fuel tax 81
pursuant to division (A) of section 5735.14 of the Revised Code 82
and shall cause the amount deducted to be paid into the general 83
revenue fund of this state; 84

(b) Sales of motor fuel other than that described in division 85
(B)(6)(a) of this section and used for powering a refrigeration 86
unit on a vehicle other than one used primarily to provide comfort 87
to the operator or occupants of the vehicle. 88

(7) Sales of natural gas by a natural gas company or 89
municipal gas utility, of water by a water-works company, or of 90
steam by a heating company, if in each case the thing sold is 91
delivered to consumers through pipes or conduits, and all sales of 92
communications services by a telegraph company, all terms as 93
defined in section 5727.01 of the Revised Code, and sales of 94
electricity delivered through wires; 95

(8) Casual sales by a person, or auctioneer employed directly 96
by the person to conduct such sales, except as to such sales of 97
motor vehicles, watercraft or outboard motors required to be 98
titled under section 1548.06 of the Revised Code, watercraft 99
documented with the United States coast guard, snowmobiles, and 100
all-purpose vehicles as defined in section 4519.01 of the Revised 101
Code; 102

(9)(a) Sales of services or tangible personal property, other 103
than motor vehicles, mobile homes, and manufactured homes, by 104
churches, organizations exempt from taxation under section 105
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 106
organizations operated exclusively for charitable purposes as 107
defined in division (B)(12) of this section, provided that the 108
number of days on which such tangible personal property or 109

services, other than items never subject to the tax, are sold does 110
 not exceed six in any calendar year, except as otherwise provided 111
 in division (B)(9)(b) of this section. If the number of days on 112
 which such sales are made exceeds six in any calendar year, the 113
 church or organization shall be considered to be engaged in 114
 business and all subsequent sales by it shall be subject to the 115
 tax. In counting the number of days, all sales by groups within a 116
 church or within an organization shall be considered to be sales 117
 of that church or organization. 118

(b) The limitation on the number of days on which tax-exempt 119
 sales may be made by a church or organization under division 120
 (B)(9)(a) of this section does not apply to sales made by student 121
 clubs and other groups of students of a primary or secondary 122
 school, or a parent-teacher association, booster group, or similar 123
 organization that raises money to support or fund curricular or 124
 extracurricular activities of a primary or secondary school. 125

(c) Divisions (B)(9)(a) and (b) of this section do not apply 126
 to sales by a noncommercial educational radio or television 127
 broadcasting station. 128

(10) Sales not within the taxing power of this state under 129
 the Constitution or laws of the United States or the Constitution 130
 of this state; 131

(11) Except for transactions that are sales under division 132
 (B)(3)(r) of section 5739.01 of the Revised Code, the 133
 transportation of persons or property, unless the transportation 134
 is by a private investigation and security service; 135

(12) Sales of tangible personal property or services to 136
 churches, to organizations exempt from taxation under section 137
 501(c)(3) of the Internal Revenue Code of 1986, and to any other 138
 nonprofit organizations operated exclusively for charitable 139

purposes in this state, no part of the net income of which inures 140
to the benefit of any private shareholder or individual, and no 141
substantial part of the activities of which consists of carrying 142
on propaganda or otherwise attempting to influence legislation; 143
sales to offices administering one or more homes for the aged or 144
one or more hospital facilities exempt under section 140.08 of the 145
Revised Code; and sales to organizations described in division (D) 146
of section 5709.12 of the Revised Code. 147

"Charitable purposes" means the relief of poverty; the 148
improvement of health through the alleviation of illness, disease, 149
or injury; the operation of an organization exclusively for the 150
provision of professional, laundry, printing, and purchasing 151
services to hospitals or charitable institutions; the operation of 152
a home for the aged, as defined in section 5701.13 of the Revised 153
Code; the operation of a radio or television broadcasting station 154
that is licensed by the federal communications commission as a 155
noncommercial educational radio or television station; the 156
operation of a nonprofit animal adoption service or a county 157
humane society; the promotion of education by an institution of 158
learning that maintains a faculty of qualified instructors, 159
teaches regular continuous courses of study, and confers a 160
recognized diploma upon completion of a specific curriculum; the 161
operation of a parent-teacher association, booster group, or 162
similar organization primarily engaged in the promotion and 163
support of the curricular or extracurricular activities of a 164
primary or secondary school; the operation of a community or area 165
center in which presentations in music, dramatics, the arts, and 166
related fields are made in order to foster public interest and 167
education therein; the production of performances in music, 168
dramatics, and the arts; or the promotion of education by an 169
organization engaged in carrying on research in, or the 170

dissemination of, scientific and technological knowledge and 171
 information primarily for the public. 172

Nothing in this division shall be deemed to exempt sales to 173
 any organization for use in the operation or carrying on of a 174
 trade or business, or sales to a home for the aged for use in the 175
 operation of independent living facilities as defined in division 176
 (A) of section 5709.12 of the Revised Code. 177

(13) Building and construction materials and services sold to 178
 construction contractors for incorporation into a structure or 179
 improvement to real property under a construction contract with 180
 this state or a political subdivision of this state, or with the 181
 United States government or any of its agencies; building and 182
 construction materials and services sold to construction 183
 contractors for incorporation into a structure or improvement to 184
 real property that are accepted for ownership by this state or any 185
 of its political subdivisions, or by the United States government 186
 or any of its agencies at the time of completion of the structures 187
 or improvements; building and construction materials sold to 188
 construction contractors for incorporation into a horticulture 189
 structure or livestock structure for a person engaged in the 190
 business of horticulture or producing livestock; building 191
 materials and services sold to a construction contractor for 192
 incorporation into a house of public worship or religious 193
 education, or a building used exclusively for charitable purposes 194
 under a construction contract with an organization whose purpose 195
 is as described in division (B)(12) of this section; building 196
 materials and services sold to a construction contractor for 197
 incorporation into a building under a construction contract with 198
 an organization exempt from taxation under section 501(c)(3) of 199
 the Internal Revenue Code of 1986 when the building is to be used 200
 exclusively for the organization's exempt purposes; building and 201

construction materials sold for incorporation into the original 202
 construction of a sports facility under section 307.696 of the 203
 Revised Code; building and construction materials and services 204
 sold to a construction contractor for incorporation into real 205
 property outside this state if such materials and services, when 206
 sold to a construction contractor in the state in which the real 207
 property is located for incorporation into real property in that 208
 state, would be exempt from a tax on sales levied by that state; 209
 building and construction materials for incorporation into a 210
 transportation facility pursuant to a public-private agreement 211
 entered into under sections 5501.70 to 5501.83 of the Revised 212
 Code; and, until one calendar year after the construction of a 213
 convention center that qualifies for property tax exemption under 214
 section 5709.084 of the Revised Code is completed, building and 215
 construction materials and services sold to a construction 216
 contractor for incorporation into the real property comprising 217
 that convention center; 218

(14) Sales of ships or vessels or rail rolling stock used or 219
 to be used principally in interstate or foreign commerce, and 220
 repairs, alterations, fuel, and lubricants for such ships or 221
 vessels or rail rolling stock; 222

(15) Sales to persons primarily engaged in any of the 223
 activities mentioned in division (B)(42)(a), (g), or (h) of this 224
 section, to persons engaged in making retail sales, or to persons 225
 who purchase for sale from a manufacturer tangible personal 226
 property that was produced by the manufacturer in accordance with 227
 specific designs provided by the purchaser, of packages, including 228
 material, labels, and parts for packages, and of machinery, 229
 equipment, and material for use primarily in packaging tangible 230
 personal property produced for sale, including any machinery, 231
 equipment, and supplies used to make labels or packages, to 232

prepare packages or products for labeling, or to label packages or
 products, by or on the order of the person doing the packaging, or
 sold at retail. "Packages" includes bags, baskets, cartons,
 crates, boxes, cans, bottles, bindings, wrappings, and other
 similar devices and containers, but does not include motor
 vehicles or bulk tanks, trailers, or similar devices attached to
 motor vehicles. "Packaging" means placing in a package. Division
 (B)(15) of this section does not apply to persons engaged in
 highway transportation for hire.

(16) Sales of food to persons using supplemental nutrition
 assistance program benefits to purchase the food. As used in this
 division, "food" has the same meaning as in 7 U.S.C. 2012 and
 federal regulations adopted pursuant to the Food and Nutrition Act
 of 2008.

(17) Sales to persons engaged in farming, agriculture,
 horticulture, or floriculture, of tangible personal property for
 use or consumption primarily in the production by farming,
 agriculture, horticulture, or floriculture of other tangible
 personal property for use or consumption primarily in the
 production of tangible personal property for sale by farming,
 agriculture, horticulture, or floriculture; or material and parts
 for incorporation into any such tangible personal property for use
 or consumption in production; and of tangible personal property
 for such use or consumption in the conditioning or holding of
 products produced by and for such use, consumption, or sale by
 persons engaged in farming, agriculture, horticulture, or
 floriculture, except where such property is incorporated into real
 property;

(18) Sales of drugs for a human being that may be dispensed
 only pursuant to a prescription; insulin as recognized in the

official United States pharmacopoeia; urine and blood testing	263
materials when used by diabetics or persons with hypoglycemia to	264
test for glucose or acetone; hypodermic syringes and needles when	265
used by diabetics for insulin injections; epoetin alfa when	266
purchased for use in the treatment of persons with medical	267
disease; hospital beds when purchased by hospitals, nursing homes,	268
or other medical facilities; and medical oxygen and medical	269
oxygen-dispensing equipment when purchased by hospitals, nursing	270
homes, or other medical facilities;	271
(19) Sales of prosthetic devices, durable medical equipment	272
for home use, or mobility enhancing equipment, when made pursuant	273
to a prescription and when such devices or equipment are for use	274
by a human being.	275
(20) Sales of emergency and fire protection vehicles and	276
equipment to nonprofit organizations for use solely in providing	277
fire protection and emergency services, including trauma care and	278
emergency medical services, for political subdivisions of the	279
state;	280
(21) Sales of tangible personal property manufactured in this	281
state, if sold by the manufacturer in this state to a retailer for	282
use in the retail business of the retailer outside of this state	283
and if possession is taken from the manufacturer by the purchaser	284
within this state for the sole purpose of immediately removing the	285
same from this state in a vehicle owned by the purchaser;	286
(22) Sales of services provided by the state or any of its	287
political subdivisions, agencies, instrumentalities, institutions,	288
or authorities, or by governmental entities of the state or any of	289
its political subdivisions, agencies, instrumentalities,	290
institutions, or authorities;	291
(23) Sales of motor vehicles to nonresidents of this state	292

under the circumstances described in division (B) of section	293
5739.029 of the Revised Code;	294
(24) Sales to persons engaged in the preparation of eggs for	295
sale of tangible personal property used or consumed directly in	296
such preparation, including such tangible personal property used	297
for cleaning, sanitizing, preserving, grading, sorting, and	298
classifying by size; packages, including material and parts for	299
packages, and machinery, equipment, and material for use in	300
packaging eggs for sale; and handling and transportation equipment	301
and parts therefor, except motor vehicles licensed to operate on	302
public highways, used in intraplant or interplant transfers or	303
shipment of eggs in the process of preparation for sale, when the	304
plant or plants within or between which such transfers or	305
shipments occur are operated by the same person. "Packages"	306
includes containers, cases, baskets, flats, fillers, filler flats,	307
cartons, closure materials, labels, and labeling materials, and	308
"packaging" means placing therein.	309
(25)(a) Sales of water to a consumer for residential use;	310
(b) Sales of water by a nonprofit corporation engaged	311
exclusively in the treatment, distribution, and sale of water to	312
consumers, if such water is delivered to consumers through pipes	313
or tubing.	314
(26) Fees charged for inspection or reinspection of motor	315
vehicles under section 3704.14 of the Revised Code;	316
(27) Sales to persons licensed to conduct a food service	317
operation pursuant to section 3717.43 of the Revised Code, of	318
tangible personal property primarily used directly for the	319
following:	320
(a) To prepare food for human consumption for sale;	321

(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;	322 323 324 325
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	326 327
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	328 329
(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;	330 331 332 333
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	334 335 336
(31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;	337 338 339
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;	340 341 342 343 344 345
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	346 347 348 349 350

(34) Sales to a telecommunications service vendor, mobile 351
telecommunications service vendor, or satellite broadcasting 352
service vendor of tangible personal property and services used 353
directly and primarily in transmitting, receiving, switching, or 354
recording any interactive, one- or two-way electromagnetic 355
communications, including voice, image, data, and information, 356
through the use of any medium, including, but not limited to, 357
poles, wires, cables, switching equipment, computers, and record 358
storage devices and media, and component parts for the tangible 359
personal property. The exemption provided in this division shall 360
be in lieu of all other exemptions under division (B)(42)(a) or 361
(n) of this section to which the vendor may otherwise be entitled, 362
based upon the use of the thing purchased in providing the 363
telecommunications, mobile telecommunications, or satellite 364
broadcasting service. 365

(35)(a) Sales where the purpose of the consumer is to use or 366
consume the things transferred in making retail sales and 367
consisting of newspaper inserts, catalogues, coupons, flyers, gift 368
certificates, or other advertising material that prices and 369
describes tangible personal property offered for retail sale. 370

(b) Sales to direct marketing vendors of preliminary 371
materials such as photographs, artwork, and typesetting that will 372
be used in printing advertising material; and of printed matter 373
that offers free merchandise or chances to win sweepstake prizes 374
and that is mailed to potential customers with advertising 375
material described in division (B)(35)(a) of this section; 376

(c) Sales of equipment such as telephones, computers, 377
facsimile machines, and similar tangible personal property 378
primarily used to accept orders for direct marketing retail sales. 379

(d) Sales of automatic food vending machines that preserve 380

food with a shelf life of forty-five days or less by refrigeration 381
and dispense it to the consumer. 382

For purposes of division (B)(35) of this section, "direct 383
marketing" means the method of selling where consumers order 384
tangible personal property by United States mail, delivery 385
service, or telecommunication and the vendor delivers or ships the 386
tangible personal property sold to the consumer from a warehouse, 387
catalogue distribution center, or similar fulfillment facility by 388
means of the United States mail, delivery service, or common 389
carrier. 390

(36) Sales to a person engaged in the business of 391
horticulture or producing livestock of materials to be 392
incorporated into a horticulture structure or livestock structure; 393

(37) Sales of personal computers, computer monitors, computer 394
keyboards, modems, and other peripheral computer equipment to an 395
individual who is licensed or certified to teach in an elementary 396
or a secondary school in this state for use by that individual in 397
preparation for teaching elementary or secondary school students; 398

(38) Sales to a professional racing team of any of the 399
following: 400

(a) Motor racing vehicles; 401

(b) Repair services for motor racing vehicles; 402

(c) Items of property that are attached to or incorporated in 403
motor racing vehicles, including engines, chassis, and all other 404
components of the vehicles, and all spare, replacement, and 405
rebuilt parts or components of the vehicles; except not including 406
tires, consumable fluids, paint, and accessories consisting of 407
instrumentation sensors and related items added to the vehicle to 408
collect and transmit data by means of telemetry and other forms of 409

communication.	410
(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;	411 412 413
(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; energy conversion equipment as defined in section 5727.01 of the Revised Code; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) or (n) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.	414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431
(41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.	432 433 434 435
(42) Sales where the purpose of the purchaser is to do any of the following:	436 437
(a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by	438 439

manufacturing, assembling, processing, or refining; or to use or
consume the thing transferred directly in producing tangible
personal property for sale by mining, including, without
limitation, the extraction from the earth of all substances that
are classed geologically as minerals, or directly in the rendition
of a public utility service, except that the sales tax levied by
this section shall be collected upon all meals, drinks, and food
for human consumption sold when transporting persons. 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.

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

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

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

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

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

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

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

(i) To use the thing transferred as qualified research and development equipment;

(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.

(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;

(l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;

(m) To use tangible personal property to perform a service 499
 listed in division (B)(3) of section 5739.01 of the Revised Code, 500
 if the property is or is to be permanently transferred to the 501
 consumer of the service as an integral part of the performance of 502
 the service; 503

(n) To use or consume the thing transferred primarily in 504
 producing tangible personal property for sale by farming, 505
 agriculture, horticulture, or floriculture. Persons engaged in 506
 rendering farming, agriculture, horticulture, or floriculture 507
 services for others are deemed engaged primarily in farming, 508
 agriculture, horticulture, or floriculture. This paragraph does 509
 not exempt from "retail sale" or "sales at retail" the sale of 510
 tangible personal property that is to be incorporated into a 511
 structure or improvement to real property. 512

(o) To use or consume the thing transferred in acquiring, 513
 formatting, editing, storing, and disseminating data or 514
 information by electronic publishing; 515

(p) To provide the thing transferred to the owner or lessee 516
 of a motor vehicle that is being repaired or serviced, if the 517
 thing transferred is a rented motor vehicle and the purchaser is 518
 reimbursed for the cost of the rented motor vehicle by a 519
 manufacturer, warrantor, or provider of a maintenance, service, or 520
 other similar contract or agreement, with respect to the motor 521
 vehicle that is being repaired or serviced; 522

(q) To use or consume the thing transferred directly in 523
 production of crude oil and natural gas for sale. Persons engaged 524
 in rendering production services for others are deemed engaged in 525
 production. 526

As used in division (B)(42)(q) of this section, "production" 527
 means operations and tangible personal property directly used to 528

expose and evaluate an underground reservoir that may contain	529
hydrocarbon resources, prepare the wellbore for production, and	530
lift and control all substances yielded by the reservoir to the	531
surface of the earth.	532
(i) For the purposes of division (B)(42)(q) of this section,	533
the "thing transferred" includes, but is not limited to, any of	534
the following:	535
(I) Services provided in the construction of permanent access	536
roads, services provided in the construction of the well site, and	537
services provided in the construction of temporary impoundments;	538
(II) Equipment and rigging used for the specific purpose of	539
creating with integrity a wellbore pathway to underground	540
reservoirs;	541
(III) Drilling and workover services used to work within a	542
subsurface wellbore, and tangible personal property directly used	543
in providing such services;	544
(IV) Casing, tubulars, and float and centralizing equipment;	545
(V) Trailers to which production equipment is attached;	546
(VI) Well completion services, including cementing of casing,	547
and tangible personal property directly used in providing such	548
services;	549
(VII) Wireline evaluation, mud logging, and perforation	550
services, and tangible personal property directly used in	551
providing such services;	552
(VIII) Reservoir stimulation, hydraulic fracturing, and	553
acidizing services, and tangible personal property directly used	554
in providing such services, including all material pumped	555
downhole;	556

(IX) Pressure pumping equipment;	557
(X) Artificial lift systems equipment;	558
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon <u>hydrocarbon</u> phases and produced water;	559 560 561
(XII) Tangible personal property directly used to control production equipment.	562 563
(ii) For the purposes of division (B)(42)(q) of this section, the "thing transferred" does not include any of the following:	564 565
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	566 567 568
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	569 570 571
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	572 573 574
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	575 576 577 578
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	579 580 581 582
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	583 584

(VII) Well site fencing, lighting, or security systems;	585
(VIII) Communication devices or services;	586
(IX) Office supplies;	587
(X) Trailers used as offices or lodging;	588
(XI) Motor vehicles of any kind;	589
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	590 591
(XIII) Tangible personal property used primarily as a safety device;	592 593
(XIV) Data collection or monitoring devices;	594
(XV) Access ladders, stairs, or platforms attached to storage tanks.	595 596
The enumeration of tangible personal property in division (B)(42)(q)(ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B)(42)(q) of this section.	597 598 599 600 601
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B)(42)(q) of this section.	602 603 604 605
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.	606 607 608
(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	609 610 611

or wax, to the consumer for the consumer's use on the premises in 612
washing, cleaning, or waxing a motor vehicle, provided no other 613
personal property or personal service is provided as part of the 614
transaction. 615

(44) Sales of replacement and modification parts for engines, 616
airframes, instruments, and interiors in, and paint for, aircraft 617
used primarily in a fractional aircraft ownership program, and 618
sales of services for the repair, modification, and maintenance of 619
such aircraft, and machinery, equipment, and supplies primarily 620
used to provide those services. 621

(45) Sales of telecommunications service that is used 622
directly and primarily to perform the functions of a call center. 623
As used in this division, "call center" means any physical 624
location where telephone calls are placed or received in high 625
volume for the purpose of making sales, marketing, customer 626
service, technical support, or other specialized business 627
activity, and that employs at least fifty individuals that engage 628
in call center activities on a full-time basis, or sufficient 629
individuals to fill fifty full-time equivalent positions. 630

(46) Sales by a telecommunications service vendor of 900 631
service to a subscriber. This division does not apply to 632
information services, as defined in division (FF) of section 633
5739.01 of the Revised Code. 634

(47) Sales of value-added non-voice data service. This 635
division does not apply to any similar service that is not 636
otherwise a telecommunications service. 637

(48)(a) Sales of machinery, equipment, and software to a 638
qualified direct selling entity for use in a warehouse or 639
distribution center primarily for storing, transporting, or 640
otherwise handling inventory that is held for sale to independent 641

salespersons who operate as direct sellers and that is held 642
primarily for distribution outside this state; 643

(b) As used in division (B)(48)(a) of this section: 644

(i) "Direct seller" means a person selling consumer products 645
to individuals for personal or household use and not from a fixed 646
retail location, including selling such product at in-home product 647
demonstrations, parties, and other one-on-one selling. 648

(ii) "Qualified direct selling entity" means an entity 649
selling to direct sellers at the time the entity enters into a tax 650
credit agreement with the tax credit authority pursuant to section 651
122.17 of the Revised Code, provided that the agreement was 652
entered into on or after January 1, 2007. Neither contingencies 653
relevant to the granting of, nor later developments with respect 654
to, the tax credit shall impair the status of the qualified direct 655
selling entity under division (B)(48) of this section after 656
execution of the tax credit agreement by the tax credit authority. 657

(c) Division (B)(48) of this section is limited to machinery, 658
equipment, and software first stored, used, or consumed in this 659
state within the period commencing June 24, 2008, and ending on 660
the date that is five years after that date. 661

(49) Sales of materials, parts, equipment, or engines used in 662
the repair or maintenance of aircraft or avionics systems of such 663
aircraft, and sales of repair, remodeling, replacement, or 664
maintenance services in this state performed on aircraft or on an 665
aircraft's avionics, engine, or component materials or parts. As 666
used in division (B)(49) of this section, "aircraft" means 667
aircraft of more than six thousand pounds maximum certified 668
takeoff weight or used exclusively in general aviation. 669

(50) Sales of full flight simulators that are used for pilot 670

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

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

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

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

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

(I) The facility is leased from the eligible county pursuant
to a lease that requires substantially all of the revenue from the
operation of the business or activity conducted by the nonprofit
corporation at the facility in excess of operating costs, capital
expenditures, and reserves to be paid to the eligible county at

least once per calendar year. 701

(II) Upon dissolution and liquidation of the nonprofit 702
corporation, all of its net assets are distributable to the board 703
of commissioners of the eligible county from which the corporation 704
leases the facility. 705

(ii) "Eligible county" has the same meaning as in section 706
307.695 of the Revised Code. 707

(53) Sales to or by a cable service provider, video service 708
provider, or radio or television broadcast station regulated by 709
the federal government of cable service or programming, video 710
service or programming, audio service or programming, or 711
electronically transferred digital audiovisual or audio work. As 712
used in division (B)(53) of this section, "cable service" and 713
"cable service provider" have the same meanings as in section 714
1332.01 of the Revised Code, and "video service," "video service 715
provider," and "video programming" have the same meanings as in 716
section 1332.21 of the Revised Code. 717

(54) Sales of investment metal bullion and investment coins. 718
"Investment metal bullion" means any bullion described in section 719
408(m)(3)(B) of the Internal Revenue Code, regardless of whether 720
that bullion is in the physical possession of a trustee. 721
"Investment coin" means any coin composed primarily of gold, 722
silver, platinum, or palladium. 723

(55) Sales of a digital audio work electronically transferred 724
for delivery through use of a machine, such as a juke box, that 725
does all of the following: 726

(a) Accepts direct payments to operate; 727

(b) Automatically plays a selected digital audio work for a 728
single play upon receipt of a payment described in division 729

(B)(55)(a) of this section;	730
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	731 732
(56)(a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:	733 734 735
(i) An item of clothing, the price of which is seventy-five dollars or less;	736 737
(ii) An item of school supplies, the price of which is twenty dollars or less;	738 739
(iii) An item of school instructional material, the price of which is twenty dollars or less.	740 741
(b) As used in division (B)(56) of this section:	742
(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing	743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758

equipment and supplies including, but not limited to, knitting 759
 needles, patterns, pins, scissors, sewing machines, sewing 760
 needles, tape measures, and thimbles; and sewing materials that 761
 become part of "clothing" including, but not limited to, buttons, 762
 fabric, lace, thread, yarn, and zippers. 763

(ii) "School supplies" means items commonly used by a student 764
 in a course of study. "School supplies" includes only the 765
 following items: binders; book bags; calculators; cellophane tape; 766
 blackboard chalk; compasses; composition books; crayons; erasers; 767
 folders, expandable, pocket, plastic, and manila; glue, paste, and 768
 paste sticks; highlighters; index cards; index card boxes; legal 769
 pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled 770
 notebook paper, copy paper, graph paper, tracing paper, manila 771
 paper, colored paper, poster board, and construction paper; pencil 772
 boxes and other school supply boxes; pencil sharpeners; pencils; 773
 pens; protractors; rulers; scissors; and writing tablets. "School 774
 supplies" does not include any item purchased for use in a trade 775
 or business. 776

(iii) "School instructional material" means written material 777
 commonly used by a student in a course of study as a reference and 778
 to learn the subject being taught. "School instructional material" 779
 includes only the following items: reference books, reference maps 780
 and globes, textbooks, and workbooks. "School instructional 781
 material" does not include any material purchased for use in a 782
 trade or business. 783

(57) Sales of tangible personal property that is not required 784
 to be registered or licensed under the laws of this state to a 785
 citizen of a foreign nation that is not a citizen of the United 786
 States, provided the property is delivered to a person in this 787
 state that is not a related member of the purchaser, is physically 788

present in this state for the sole purpose of temporary storage 789
 and package consolidation, and is subsequently delivered to the 790
 purchaser at a delivery address in a foreign nation. As used in 791
 division (B)(56) of this section, "related member" has the same 792
 meaning as in section 5733.042 of the Revised Code, and "temporary 793
 storage" means the storage of tangible personal property for a 794
 period of not more than sixty days. 795

(C) For the purpose of the proper administration of this 796
 chapter, and to prevent the evasion of the tax, it is presumed 797
 that all sales made in this state are subject to the tax until the 798
 contrary is established. 799

(D) The levy of this tax on retail sales of recreation and 800
 sports club service shall not prevent a municipal corporation from 801
 levying any tax on recreation and sports club dues or on any 802
 income generated by recreation and sports club dues. 803

(E) The tax collected by the vendor from the consumer under 804
 this chapter is not part of the price, but is a tax collection for 805
 the benefit of the state, and of counties levying an additional 806
 sales tax pursuant to section 5739.021 or 5739.026 of the Revised 807
 Code and of transit authorities levying an additional sales tax 808
 pursuant to section 5739.023 of the Revised Code. Except for the 809
 discount authorized under section 5739.12 of the Revised Code and 810
 the effects of any rounding pursuant to section 5703.055 of the 811
 Revised Code, no person other than the state or such a county or 812
 transit authority shall derive any benefit from the collection or 813
 payment of the tax levied by this section or section 5739.021, 814
 5739.023, or 5739.026 of the Revised Code." 815

In line 9361, after "5735.27," insert "5739.02," 816

After line 10588, insert: 817

"Section 757.80. The amendment by this act of section 5739.02 818
of the Revised Code applies to sales of motor fuel occurring on or 819
after the first day of the first month that begins at least thirty 820
days after the effective date of the amendment of that section by 821
this act." 822

The motion was _____ agreed to.

SYNOPSIS

Sales tax exemption for non-vehicle fuel 823

R.C. 5739.02(B)(6)(b); Section 757.80 824

Restores and modifies a sales tax exemption that was added by 825
the House then removed by the Senate. In the House-passed bill, 826
motor fuel used by a heavy truck for any purpose other than 827
propelling the truck on public roads was exempted from sales tax. 828
This amendment instead exempts only motor fuel that is used to 829
power a refrigeration unit on any vehicle other than a unit used 830
for the comfort of the vehicle occupants. 831

(Under current law, if the motor fuel tax has been paid on 832
the fuel and the taxpayer is eligible for a motor fuel tax refund 833
because of the non-road use, that refund would be reduced by the 834
sales tax due on that fuel unless a sales tax exemption applied 835
already, e.g., for public utility vehicles.) 836