

S.B. 26  
As Re-Referred by H. Rules  
and Reference

**Topic:** Feminine hygiene products sales tax exemption

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, delete "section" and insert "sections 1  
5739.01, 5739.012, 5739.02, 5739.03, and" 2

In line 4 of the title, after "supplies" insert "and to 3  
exempt feminine hygiene products from the sales and use tax" 4

In line 5, delete "section" and insert "sections 5739.01, 5  
5739.012, 5739.02, 5739.03, and" 6

After line 6, insert: 7

"**Sec. 5739.01.** As used in this chapter: 8

(A) "Person" includes individuals, receivers, assignees, 9  
trustees in bankruptcy, estates, firms, partnerships, 10  
associations, joint-stock companies, joint ventures, clubs, 11  
societies, corporations, the state and its political subdivisions, 12  
and combinations of individuals of any form. 13

(B) "Sale" and "selling" include all of the following 14  
transactions for a consideration in any manner, whether absolutely 15  
or conditionally, whether for a price or rental, in money or by 16  
exchange, and by any means whatsoever: 17

(1) All transactions by which title or possession, or both, 18  
of tangible personal property, is or is to be transferred, or a 19  
license to use or consume tangible personal property is or is to 20  
be granted; 21

(2) All transactions by which lodging by a hotel is or is to 22  
be furnished to transient guests; 23

(3) All transactions by which: 24

(a) An item of tangible personal property is or is to be 25  
repaired, except property, the purchase of which would not be 26  
subject to the tax imposed by section 5739.02 of the Revised Code; 27

(b) An item of tangible personal property is or is to be 28  
installed, except property, the purchase of which would not be 29  
subject to the tax imposed by section 5739.02 of the Revised Code 30  
or property that is or is to be incorporated into and will become 31  
a part of a production, transmission, transportation, or 32  
distribution system for the delivery of a public utility service; 33

(c) The service of washing, cleaning, waxing, polishing, or 34  
painting a motor vehicle is or is to be furnished; 35

(d) Until August 1, 2003, industrial laundry cleaning 36  
services are or are to be provided and, on and after August 1, 37  
2003, laundry and dry cleaning services are or are to be provided; 38

(e) Automatic data processing, computer services, or 39  
electronic information services are or are to be provided for use 40  
in business when the true object of the transaction is the receipt 41  
by the consumer of automatic data processing, computer services, 42  
or electronic information services rather than the receipt of 43  
personal or professional services to which automatic data 44  
processing, computer services, or electronic information services 45  
are incidental or supplemental. Notwithstanding any other 46

provision of this chapter, such transactions that occur between 47  
members of an affiliated group are not sales. An "affiliated 48  
group" means two or more persons related in such a way that one 49  
person owns or controls the business operation of another member 50  
of the group. In the case of corporations with stock, one 51  
corporation owns or controls another if it owns more than fifty 52  
per cent of the other corporation's common stock with voting 53  
rights. 54

(f) Telecommunications service, including prepaid calling 55  
service, prepaid wireless calling service, or ancillary service, 56  
is or is to be provided, but not including coin-operated telephone 57  
service; 58

(g) Landscaping and lawn care service is or is to be 59  
provided; 60

(h) Private investigation and security service is or is to be 61  
provided; 62

(i) Information services or tangible personal property is 63  
provided or ordered by means of a nine hundred telephone call; 64

(j) Building maintenance and janitorial service is or is to 65  
be provided; 66

(k) Employment service is or is to be provided; 67

(l) Employment placement service is or is to be provided; 68

(m) Exterminating service is or is to be provided; 69

(n) Physical fitness facility service is or is to be 70  
provided; 71

(o) Recreation and sports club service is or is to be 72  
provided; 73

(p) On and after August 1, 2003, satellite broadcasting 74

service is or is to be provided; 75

(q) On and after August 1, 2003, personal care service is or 76  
is to be provided to an individual. As used in this division, 77  
"personal care service" includes skin care, the application of 78  
cosmetics, manicuring, pedicuring, hair removal, tattooing, body 79  
piercing, tanning, massage, and other similar services. "Personal 80  
care service" does not include a service provided by or on the 81  
order of a licensed physician or licensed chiropractor, or the 82  
cutting, coloring, or styling of an individual's hair. 83

(r) On and after August 1, 2003, the transportation of 84  
persons by motor vehicle or aircraft is or is to be provided, when 85  
the transportation is entirely within this state, except for 86  
transportation provided by an ambulance service, by a transit bus, 87  
as defined in section 5735.01 of the Revised Code, and 88  
transportation provided by a citizen of the United States holding 89  
a certificate of public convenience and necessity issued under 49 90  
U.S.C. 41102; 91

(s) On and after August 1, 2003, motor vehicle towing service 92  
is or is to be provided. As used in this division, "motor vehicle 93  
towing service" means the towing or conveyance of a wrecked, 94  
disabled, or illegally parked motor vehicle. 95

(t) On and after August 1, 2003, snow removal service is or 96  
is to be provided. As used in this division, "snow removal 97  
service" means the removal of snow by any mechanized means, but 98  
does not include the providing of such service by a person that 99  
has less than five thousand dollars in sales of such service 100  
during the calendar year. 101

(u) Electronic publishing service is or is to be provided to 102  
a consumer for use in business, except that such transactions 103  
occurring between members of an affiliated group, as defined in 104

division (B)(3)(e) of this section, are not sales. 105

(4) All transactions by which printed, imprinted, 106  
overprinted, lithographic, multilithic, blueprinted, photostatic, 107  
or other productions or reproductions of written or graphic matter 108  
are or are to be furnished or transferred; 109

(5) The production or fabrication of tangible personal 110  
property for a consideration for consumers who furnish either 111  
directly or indirectly the materials used in the production of 112  
fabrication work; and include the furnishing, preparing, or 113  
serving for a consideration of any tangible personal property 114  
consumed on the premises of the person furnishing, preparing, or 115  
serving such tangible personal property. Except as provided in 116  
section 5739.03 of the Revised Code, a construction contract 117  
pursuant to which tangible personal property is or is to be 118  
incorporated into a structure or improvement on and becoming a 119  
part of real property is not a sale of such tangible personal 120  
property. The construction contractor is the consumer of such 121  
tangible personal property, provided that the sale and 122  
installation of carpeting, the sale and installation of 123  
agricultural land tile, the sale and erection or installation of 124  
portable grain bins, or the provision of landscaping and lawn care 125  
service and the transfer of property as part of such service is 126  
never a construction contract. 127

As used in division (B)(5) of this section: 128

(a) "Agricultural land tile" means fired clay or concrete 129  
tile, or flexible or rigid perforated plastic pipe or tubing, 130  
incorporated or to be incorporated into a subsurface drainage 131  
system appurtenant to land used or to be used primarily in 132  
production by farming, agriculture, horticulture, or floriculture. 133  
The term does not include such materials when they are or are to 134

be incorporated into a drainage system appurtenant to a building 135  
 or structure even if the building or structure is used or to be 136  
 used in such production. 137

(b) "Portable grain bin" means a structure that is used or to 138  
 be used by a person engaged in farming or agriculture to shelter 139  
 the person's grain and that is designed to be disassembled without 140  
 significant damage to its component parts. 141

(6) All transactions in which all of the shares of stock of a 142  
 closely held corporation are transferred, or an ownership interest 143  
 in a pass-through entity, as defined in section 5733.04 of the 144  
 Revised Code, is transferred, if the corporation or pass-through 145  
 entity is not engaging in business and its entire assets consist 146  
 of boats, planes, motor vehicles, or other tangible personal 147  
 property operated primarily for the use and enjoyment of the 148  
 shareholders or owners; 149

(7) All transactions in which a warranty, maintenance or 150  
 service contract, or similar agreement by which the vendor of the 151  
 warranty, contract, or agreement agrees to repair or maintain the 152  
 tangible personal property of the consumer is or is to be 153  
 provided; 154

(8) The transfer of copyrighted motion picture films used 155  
 solely for advertising purposes, except that the transfer of such 156  
 films for exhibition purposes is not a sale; 157

(9) On and after August 1, 2003, all transactions by which 158  
 tangible personal property is or is to be stored, except such 159  
 property that the consumer of the storage holds for sale in the 160  
 regular course of business; 161

(10) All transactions in which "guaranteed auto protection" 162  
 is provided whereby a person promises to pay to the consumer the 163

difference between the amount the consumer receives from motor  
vehicle insurance and the amount the consumer owes to a person  
holding title to or a lien on the consumer's motor vehicle in the  
event the consumer's motor vehicle suffers a total loss under the  
terms of the motor vehicle insurance policy or is stolen and not  
recovered, if the protection and its price are included in the  
purchase or lease agreement;

(11)(a) Except as provided in division (B)(11)(b) of this  
section, on and after October 1, 2009, all transactions by which  
health care services are paid for, reimbursed, provided,  
delivered, arranged for, or otherwise made available by a medicaid  
health insuring corporation pursuant to the corporation's contract  
with the state.

(b) If the centers for medicare and medicaid services of the  
United States department of health and human services determines  
that the taxation of transactions described in division (B)(11)(a)  
of this section constitutes an impermissible health care-related  
tax under the "Social Security Act," section 1903(w), 42 U.S.C.  
1396b(w), and regulations adopted thereunder, the medicaid  
director shall notify the tax commissioner of that determination.  
Beginning with the first day of the month following that  
notification, the transactions described in division (B)(11)(a) of  
this section are not sales for the purposes of this chapter or  
Chapter 5741. of the Revised Code. The tax commissioner shall  
order that the collection of taxes under sections 5739.02,  
5739.021, 5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and  
5741.023 of the Revised Code shall cease for transactions  
occurring on or after that date.

(12) All transactions by which a specified digital product is  
provided for permanent use or less than permanent use, regardless

of whether continued payment is required. 194

Except as provided in this section, "sale" and "selling" do 195  
not include transfers of interest in leased property where the 196  
original lessee and the terms of the original lease agreement 197  
remain unchanged, or professional, insurance, or personal service 198  
transactions that involve the transfer of tangible personal 199  
property as an inconsequential element, for which no separate 200  
charges are made. 201

(C) "Vendor" means the person providing the service or by 202  
whom the transfer effected or license given by a sale is or is to 203  
be made or given and, for sales described in division (B)(3)(i) of 204  
this section, the telecommunications service vendor that provides 205  
the nine hundred telephone service; if two or more persons are 206  
engaged in business at the same place of business under a single 207  
trade name in which all collections on account of sales by each 208  
are made, such persons shall constitute a single vendor. 209

Physicians, dentists, hospitals, and veterinarians who are 210  
engaged in selling tangible personal property as received from 211  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 212  
articles, are vendors. Veterinarians who are engaged in 213  
transferring to others for a consideration drugs, the dispensing 214  
of which does not require an order of a licensed veterinarian or 215  
physician under federal law, are vendors. 216

The operator of any peer-to-peer car sharing program shall be 217  
considered to be the vendor. 218

(D)(1) "Consumer" means the person for whom the service is 219  
provided, to whom the transfer effected or license given by a sale 220  
is or is to be made or given, to whom the service described in 221  
division (B)(3)(f) or (i) of this section is charged, or to whom 222  
the admission is granted. 223

(2) Physicians, dentists, hospitals, and blood banks operated 224  
 by nonprofit institutions and persons licensed to practice 225  
 veterinary medicine, surgery, and dentistry are consumers of all 226  
 tangible personal property and services purchased by them in 227  
 connection with the practice of medicine, dentistry, the rendition 228  
 of hospital or blood bank service, or the practice of veterinary 229  
 medicine, surgery, and dentistry. In addition to being consumers 230  
 of drugs administered by them or by their assistants according to 231  
 their direction, veterinarians also are consumers of drugs that 232  
 under federal law may be dispensed only by or upon the order of a 233  
 licensed veterinarian or physician, when transferred by them to 234  
 others for a consideration to provide treatment to animals as 235  
 directed by the veterinarian. 236

(3) A person who performs a facility management, or similar 237  
 service contract for a contractee is a consumer of all tangible 238  
 personal property and services purchased for use in connection 239  
 with the performance of such contract, regardless of whether title 240  
 to any such property vests in the contractee. The purchase of such 241  
 property and services is not subject to the exception for resale 242  
 under division (E) of this section. 243

(4)(a) In the case of a person who purchases printed matter 244  
 for the purpose of distributing it or having it distributed to the 245  
 public or to a designated segment of the public, free of charge, 246  
 that person is the consumer of that printed matter, and the 247  
 purchase of that printed matter for that purpose is a sale. 248

(b) In the case of a person who produces, rather than 249  
 purchases, printed matter for the purpose of distributing it or 250  
 having it distributed to the public or to a designated segment of 251  
 the public, free of charge, that person is the consumer of all 252  
 tangible personal property and services purchased for use or 253

consumption in the production of that printed matter. That person 254  
 is not entitled to claim exemption under division (B)(42)(f) of 255  
 section 5739.02 of the Revised Code for any material incorporated 256  
 into the printed matter or any equipment, supplies, or services 257  
 primarily used to produce the printed matter. 258

(c) The distribution of printed matter to the public or to a 259  
 designated segment of the public, free of charge, is not a sale to 260  
 the members of the public to whom the printed matter is 261  
 distributed or to any persons who purchase space in the printed 262  
 matter for advertising or other purposes. 263

(5) A person who makes sales of any of the services listed in 264  
 division (B)(3) of this section is the consumer of any tangible 265  
 personal property used in performing the service. The purchase of 266  
 that property is not subject to the resale exception under 267  
 division (E) of this section. 268

(6) A person who engages in highway transportation for hire 269  
 is the consumer of all packaging materials purchased by that 270  
 person and used in performing the service, except for packaging 271  
 materials sold by such person in a transaction separate from the 272  
 service. 273

(7) In the case of a transaction for health care services 274  
 under division (B)(11) of this section, a medicaid health insuring 275  
 corporation is the consumer of such services. The purchase of such 276  
 services by a medicaid health insuring corporation is not subject 277  
 to the exception for resale under division (E) of this section or 278  
 to the exemptions provided under divisions (B)(12), (18), (19), 279  
 and (22) of section 5739.02 of the Revised Code. 280

(E) "Retail sale" and "sales at retail" include all sales, 281  
 except those in which the purpose of the consumer is to resell the 282  
 thing transferred or benefit of the service provided, by a person 283

engaging in business, in the form in which the same is, or is to be, received by the person. 284  
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(F) "Business" includes any activity engaged in by any person with the object of gain, benefit, or advantage, either direct or indirect. "Business" does not include the activity of a person in managing and investing the person's own funds. 286  
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(G) "Engaging in business" means commencing, conducting, or continuing in business, and liquidating a business when the liquidator thereof holds itself out to the public as conducting such business. Making a casual sale is not engaging in business. 290  
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(H)(1)(a) "Price," except as provided in divisions (H)(2), (3), and (4) of this section, means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following: 294  
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(i) The vendor's cost of the property sold; 300

(ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, including the tax imposed under Chapter 5751. of the Revised Code, and any other expense of the vendor; 301  
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(iii) Charges by the vendor for any services necessary to complete the sale; 306  
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(iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing. 308  
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(v) Installation charges;	313
(vi) Credit for any trade-in.	314
(b) "Price" includes consideration received by the vendor	315
from a third party, if the vendor actually receives the	316
consideration from a party other than the consumer, and the	317
consideration is directly related to a price reduction or discount	318
on the sale; the vendor has an obligation to pass the price	319
reduction or discount through to the consumer; the amount of the	320
consideration attributable to the sale is fixed and determinable	321
by the vendor at the time of the sale of the item to the consumer;	322
and one of the following criteria is met:	323
(i) The consumer presents a coupon, certificate, or other	324
document to the vendor to claim a price reduction or discount	325
where the coupon, certificate, or document is authorized,	326
distributed, or granted by a third party with the understanding	327
that the third party will reimburse any vendor to whom the coupon,	328
certificate, or document is presented;	329
(ii) The consumer identifies the consumer's self to the	330
seller as a member of a group or organization entitled to a price	331
reduction or discount. A preferred customer card that is available	332
to any patron does not constitute membership in such a group or	333
organization.	334
(iii) The price reduction or discount is identified as a	335
third party price reduction or discount on the invoice received by	336
the consumer, or on a coupon, certificate, or other document	337
presented by the consumer.	338
(c) "Price" does not include any of the following:	339
(i) Discounts, including cash, term, or coupons that are not	340
reimbursed by a third party that are allowed by a vendor and taken	341

by a consumer on a sale; 342

(ii) Interest, financing, and carrying charges from credit 343  
extended on the sale of tangible personal property or services, if 344  
the amount is separately stated on the invoice, bill of sale, or 345  
similar document given to the purchaser; 346

(iii) Any taxes legally imposed directly on the consumer that 347  
are separately stated on the invoice, bill of sale, or similar 348  
document given to the consumer. For the purpose of this division, 349  
the tax imposed under Chapter 5751. of the Revised Code is not a 350  
tax directly on the consumer, even if the tax or a portion thereof 351  
is separately stated. 352

(iv) Notwithstanding divisions (H)(1)(b)(i) to (iii) of this 353  
section, any discount allowed by an automobile manufacturer to its 354  
employee, or to the employee of a supplier, on the purchase of a 355  
new motor vehicle from a new motor vehicle dealer in this state. 356

(v) The dollar value of a gift card that is not sold by a 357  
vendor or purchased by a consumer and that is redeemed by the 358  
consumer in purchasing tangible personal property or services if 359  
the vendor is not reimbursed and does not receive compensation 360  
from a third party to cover all or part of the gift card value. 361  
For the purposes of this division, a gift card is not sold by a 362  
vendor or purchased by a consumer if it is distributed pursuant to 363  
an awards, loyalty, or promotional program. Past and present 364  
purchases of tangible personal property or services by the 365  
consumer shall not be treated as consideration exchanged for a 366  
gift card. 367

(2) In the case of a sale of any new motor vehicle by a new 368  
motor vehicle dealer, as defined in section 4517.01 of the Revised 369  
Code, in which another motor vehicle is accepted by the dealer as 370  
part of the consideration received, "price" has the same meaning 371

as in division (H)(1) of this section, reduced by the credit 372  
 afforded the consumer by the dealer for the motor vehicle received 373  
 in trade. 374

(3) In the case of a sale of any watercraft or outboard motor 375  
 by a watercraft dealer licensed in accordance with section 376  
 1547.543 of the Revised Code, in which another watercraft, 377  
 watercraft and trailer, or outboard motor is accepted by the 378  
 dealer as part of the consideration received, "price" has the same 379  
 meaning as in division (H)(1) of this section, reduced by the 380  
 credit afforded the consumer by the dealer for the watercraft, 381  
 watercraft and trailer, or outboard motor received in trade. As 382  
 used in this division, "watercraft" includes an outdrive unit 383  
 attached to the watercraft. 384

(4) In the case of transactions for health care services 385  
 under division (B)(11) of this section, "price" means the amount 386  
 of managed care premiums received each month by a medicaid health 387  
 insuring corporation. 388

(I) "Receipts" means the total amount of the prices of the 389  
 sales of vendors, provided that the dollar value of gift cards 390  
 distributed pursuant to an awards, loyalty, or promotional 391  
 program, and cash discounts allowed and taken on sales at the time 392  
 they are consummated are not included, minus any amount deducted 393  
 as a bad debt pursuant to section 5739.121 of the Revised Code. 394  
 "Receipts" does not include the sale price of property returned or 395  
 services rejected by consumers when the full sale price and tax 396  
 are refunded either in cash or by credit. 397

(J) "Place of business" means any location at which a person 398  
 engages in business. 399

(K) "Premises" includes any real property or portion thereof 400  
 upon which any person engages in selling tangible personal 401

property at retail or making retail sales and also includes any 402  
real property or portion thereof designated for, or devoted to, 403  
use in conjunction with the business engaged in by such person. 404

(L) "Casual sale" means a sale of an item of tangible 405  
personal property that was obtained by the person making the sale, 406  
through purchase or otherwise, for the person's own use and was 407  
previously subject to any state's taxing jurisdiction on its sale 408  
or use, and includes such items acquired for the seller's use that 409  
are sold by an auctioneer employed directly by the person for such 410  
purpose, provided the location of such sales is not the 411  
auctioneer's permanent place of business. As used in this 412  
division, "permanent place of business" includes any location 413  
where such auctioneer has conducted more than two auctions during 414  
the year. 415

(M) "Hotel" means every establishment kept, used, maintained, 416  
advertised, or held out to the public to be a place where sleeping 417  
accommodations are offered to guests, in which five or more rooms 418  
are used for the accommodation of such guests, whether the rooms 419  
are in one or several structures, except as otherwise provided in 420  
division (G) of section 5739.09 of the Revised Code. 421

(N) "Transient guests" means persons occupying a room or 422  
rooms for sleeping accommodations for less than thirty consecutive 423  
days. 424

(O) "Making retail sales" means the effecting of transactions 425  
wherein one party is obligated to pay the price and the other 426  
party is obligated to provide a service or to transfer title to or 427  
possession of the item sold. "Making retail sales" does not 428  
include the preliminary acts of promoting or soliciting the retail 429  
sales, other than the distribution of printed matter which 430  
displays or describes and prices the item offered for sale, nor 431

does it include delivery of a predetermined quantity of tangible 432  
personal property or transportation of property or personnel to or 433  
from a place where a service is performed. 434

(P) "Used directly in the rendition of a public utility 435  
service" means that property that is to be incorporated into and 436  
will become a part of the consumer's production, transmission, 437  
transportation, or distribution system and that retains its 438  
classification as tangible personal property after such 439  
incorporation; fuel or power used in the production, transmission, 440  
transportation, or distribution system; and tangible personal 441  
property used in the repair and maintenance of the production, 442  
transmission, transportation, or distribution system, including 443  
only such motor vehicles as are specially designed and equipped 444  
for such use. Tangible personal property and services used 445  
primarily in providing highway transportation for hire are not 446  
used directly in the rendition of a public utility service. In 447  
this definition, "public utility" includes a citizen of the United 448  
States holding, and required to hold, a certificate of public 449  
convenience and necessity issued under 49 U.S.C. 41102. 450

(Q) "Refining" means removing or separating a desirable 451  
product from raw or contaminated materials by distillation or 452  
physical, mechanical, or chemical processes. 453

(R) "Assembly" and "assembling" mean attaching or fitting 454  
together parts to form a product, but do not include packaging a 455  
product. 456

(S) "Manufacturing operation" means a process in which 457  
materials are changed, converted, or transformed into a different 458  
state or form from which they previously existed and includes 459  
refining materials, assembling parts, and preparing raw materials 460  
and parts by mixing, measuring, blending, or otherwise committing 461

such materials or parts to the manufacturing process. 462

"Manufacturing operation" does not include packaging. 463

(T) "Fiscal officer" means, with respect to a regional 464  
transit authority, the secretary-treasurer thereof, and with 465  
respect to a county that is a transit authority, the fiscal 466  
officer of the county transit board if one is appointed pursuant 467  
to section 306.03 of the Revised Code or the county auditor if the 468  
board of county commissioners operates the county transit system. 469

(U) "Transit authority" means a regional transit authority 470  
created pursuant to section 306.31 of the Revised Code or a county 471  
in which a county transit system is created pursuant to section 472  
306.01 of the Revised Code. For the purposes of this chapter, a 473  
transit authority must extend to at least the entire area of a 474  
single county. A transit authority that includes territory in more 475  
than one county must include all the area of the most populous 476  
county that is a part of such transit authority. County population 477  
shall be measured by the most recent census taken by the United 478  
States census bureau. 479

(V) "Legislative authority" means, with respect to a regional 480  
transit authority, the board of trustees thereof, and with respect 481  
to a county that is a transit authority, the board of county 482  
commissioners. 483

(W) "Territory of the transit authority" means all of the 484  
area included within the territorial boundaries of a transit 485  
authority as they from time to time exist. Such territorial 486  
boundaries must at all times include all the area of a single 487  
county or all the area of the most populous county that is a part 488  
of such transit authority. County population shall be measured by 489  
the most recent census taken by the United States census bureau. 490

(X) "Providing a service" means providing or furnishing 491

anything described in division (B)(3) of this section for 492  
consideration. 493

(Y)(1)(a) "Automatic data processing" means processing of 494  
others' data, including keypunching or similar data entry services 495  
together with verification thereof, or providing access to 496  
computer equipment for the purpose of processing data. 497

(b) "Computer services" means providing services consisting 498  
of specifying computer hardware configurations and evaluating 499  
technical processing characteristics, computer programming, and 500  
training of computer programmers and operators, provided in 501  
conjunction with and to support the sale, lease, or operation of 502  
taxable computer equipment or systems. 503

(c) "Electronic information services" means providing access 504  
to computer equipment by means of telecommunications equipment for 505  
the purpose of either of the following: 506

(i) Examining or acquiring data stored in or accessible to 507  
the computer equipment; 508

(ii) Placing data into the computer equipment to be retrieved 509  
by designated recipients with access to the computer equipment. 510

For transactions occurring on or after the effective date of 511  
the amendment of this section by H.B. 157 of the 127th general 512  
assembly, December 21, 2007, "electronic information services" 513  
does not include electronic publishing. 514

(d) "Automatic data processing, computer services, or 515  
electronic information services" shall not include personal or 516  
professional services. 517

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 518  
section, "personal and professional services" means all services 519  
other than automatic data processing, computer services, or 520

electronic information services, including but not limited to:	521
(a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material;	522 523 524 525 526
(b) Analyzing business policies and procedures;	527
(c) Identifying management information needs;	528
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	529 530 531
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	532 533 534 535
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	536 537 538
(g) Testing of business procedures;	539
(h) Training personnel in business procedure applications;	540
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	541 542 543 544 545 546
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	547 548

(k) Providing digital advertising services.	549
The services listed in divisions (Y)(2)(a) to (k) of this section are not automatic data processing or computer services.	550 551
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	552 553 554
(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;	555 556 557 558 559
(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z)(1) of this section;	560 561 562 563 564 565 566
(3) A person who leases a motor vehicle to and operates it for a person described by division (Z)(1) or (2) of this section.	567 568
(AA)(1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal	569 570 571 572 573 574 575 576 577

communications commission as enhanced or value-added.	578
"Telecommunications service" does not include any of the	579
following:	580
(a) Data processing and information services that allow data	581
to be generated, acquired, stored, processed, or retrieved and	582
delivered by an electronic transmission to a consumer where the	583
consumer's primary purpose for the underlying transaction is the	584
processed data or information;	585
(b) Installation or maintenance of wiring or equipment on a	586
customer's premises;	587
(c) Tangible personal property;	588
(d) Advertising, including directory advertising;	589
(e) Billing and collection services provided to third	590
parties;	591
(f) Internet access service;	592
(g) Radio and television audio and video programming	593
services, regardless of the medium, including the furnishing of	594
transmission, conveyance, and routing of such services by the	595
programming service provider. Radio and television audio and video	596
programming services include, but are not limited to, cable	597
service, as defined in 47 U.S.C. 522(6), and audio and video	598
programming services delivered by commercial mobile radio service	599
providers, as defined in 47 C.F.R. 20.3;	600
(h) Ancillary service;	601
(i) Digital products delivered electronically, including	602
software, music, video, reading materials, or ring tones.	603
(2) "Ancillary service" means a service that is associated	604
with or incidental to the provision of telecommunications service,	605

including conference bridging service, detailed telecommunications  
billing service, directory assistance, vertical service, and voice  
mail service. As used in this division:

(a) "Conference bridging service" means an ancillary service  
that links two or more participants of an audio or video  
conference call, including providing a telephone number.  
"Conference bridging service" does not include telecommunications  
services used to reach the conference bridge.

(b) "Detailed telecommunications billing service" means an  
ancillary service of separately stating information pertaining to  
individual calls on a customer's billing statement.

(c) "Directory assistance" means an ancillary service of  
providing telephone number or address information.

(d) "Vertical service" means an ancillary service that is  
offered in connection with one or more telecommunications  
services, which offers advanced calling features that allow  
customers to identify callers and manage multiple calls and call  
connections, including conference bridging service.

(e) "Voice mail service" means an ancillary service that  
enables the customer to store, send, or receive recorded messages.  
"Voice mail service" does not include any vertical services that  
the customer may be required to have in order to utilize the voice  
mail service.

(3) "900 service" means an inbound toll telecommunications  
service purchased by a subscriber that allows the subscriber's  
customers to call in to the subscriber's prerecorded announcement  
or live service, and which is typically marketed under the name  
"900 service" and any subsequent numbers designated by the federal  
communications commission. "900 service" does not include the

charge for collection services provided by the seller of the 635  
telecommunications service to the subscriber, or services or 636  
products sold by the subscriber to the subscriber's customer. 637

(4) "Prepaid calling service" means the right to access 638  
exclusively telecommunications services, which must be paid for in 639  
advance and which enables the origination of calls using an access 640  
number or authorization code, whether manually or electronically 641  
dialed, and that is sold in predetermined units or dollars of 642  
which the number declines with use in a known amount. 643

(5) "Prepaid wireless calling service" means a 644  
telecommunications service that provides the right to utilize 645  
mobile telecommunications service as well as other 646  
non-telecommunications services, including the download of digital 647  
products delivered electronically, and content and ancillary 648  
services, that must be paid for in advance and that is sold in 649  
predetermined units or dollars of which the number declines with 650  
use in a known amount. 651

(6) "Value-added non-voice data service" means a 652  
telecommunications service in which computer processing 653  
applications are used to act on the form, content, code, or 654  
protocol of the information or data primarily for a purpose other 655  
than transmission, conveyance, or routing. 656

(7) "Coin-operated telephone service" means a 657  
telecommunications service paid for by inserting money into a 658  
telephone accepting direct deposits of money to operate. 659

(8) "Customer" has the same meaning as in section 5739.034 of 660  
the Revised Code. 661

(BB) "Laundry and dry cleaning services" means removing soil 662  
or dirt from towels, linens, articles of clothing, or other fabric 663

items that belong to others and supplying towels, linens, articles  
of clothing, or other fabric items. "Laundry and dry cleaning  
services" does not include the provision of self-service  
facilities for use by consumers to remove soil or dirt from  
towels, linens, articles of clothing, or other fabric items.

(CC) "Magazines distributed as controlled circulation  
publications" means magazines containing at least twenty-four  
pages, at least twenty-five per cent editorial content, issued at  
regular intervals four or more times a year, and circulated  
without charge to the recipient, provided that such magazines are  
not owned or controlled by individuals or business concerns which  
conduct such publications as an auxiliary to, and essentially for  
the advancement of the main business or calling of, those who own  
or control them.

(DD) "Landscaping and lawn care service" means the services  
of planting, seeding, sodding, removing, cutting, trimming,  
pruning, mulching, aerating, applying chemicals, watering,  
fertilizing, and providing similar services to establish, promote,  
or control the growth of trees, shrubs, flowers, grass, ground  
cover, and other flora, or otherwise maintaining a lawn or  
landscape grown or maintained by the owner for ornamentation or  
other nonagricultural purpose. However, "landscaping and lawn care  
service" does not include the providing of such services by a  
person who has less than five thousand dollars in sales of such  
services during the calendar year.

(EE) "Private investigation and security service" means the  
performance of any activity for which the provider of such service  
is required to be licensed pursuant to Chapter 4749. of the  
Revised Code, or would be required to be so licensed in performing  
such services in this state, and also includes the services of

conducting polygraph examinations and of monitoring or overseeing 694  
the activities on or in, or the condition of, the consumer's home, 695  
business, or other facility by means of electronic or similar 696  
monitoring devices. "Private investigation and security service" 697  
does not include special duty services provided by off-duty police 698  
officers, deputy sheriffs, and other peace officers regularly 699  
employed by the state or a political subdivision. 700

(FF) "Information services" means providing conversation, 701  
giving consultation or advice, playing or making a voice or other 702  
recording, making or keeping a record of the number of callers, 703  
and any other service provided to a consumer by means of a nine 704  
hundred telephone call, except when the nine hundred telephone 705  
call is the means by which the consumer makes a contribution to a 706  
recognized charity. 707

(GG) "Research and development" means designing, creating, or 708  
formulating new or enhanced products, equipment, or manufacturing 709  
processes, and also means conducting scientific or technological 710  
inquiry and experimentation in the physical sciences with the goal 711  
of increasing scientific knowledge which may reveal the bases for 712  
new or enhanced products, equipment, or manufacturing processes. 713

(HH) "Qualified research and development equipment" means 714  
capitalized tangible personal property, and leased personal 715  
property that would be capitalized if purchased, used by a person 716  
primarily to perform research and development. Tangible personal 717  
property primarily used in testing, as defined in division (A)(4) 718  
of section 5739.011 of the Revised Code, or used for recording or 719  
storing test results, is not qualified research and development 720  
equipment unless such property is primarily used by the consumer 721  
in testing the product, equipment, or manufacturing process being 722  
created, designed, or formulated by the consumer in the research 723

and development activity or in recording or storing such test results. 724  
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(II) "Building maintenance and janitorial service" means 726  
cleaning the interior or exterior of a building and any tangible 727  
personal property located therein or thereon, including any 728  
services incidental to such cleaning for which no separate charge 729  
is made. However, "building maintenance and janitorial service" 730  
does not include the providing of such service by a person who has 731  
less than five thousand dollars in sales of such service during 732  
the calendar year. As used in this division, "cleaning" does not 733  
include sanitation services necessary for an establishment 734  
described in 21 U.S.C. 608 to comply with rules and regulations 735  
adopted pursuant to that section. 736

(JJ) "Employment service" means providing or supplying 737  
personnel, on a temporary or long-term basis, to perform work or 738  
labor under the supervision or control of another, when the 739  
personnel so provided or supplied receive their wages, salary, or 740  
other compensation from the provider or supplier of the employment 741  
service or from a third party that provided or supplied the 742  
personnel to the provider or supplier. "Employment service" does 743  
not include: 744

(1) Acting as a contractor or subcontractor, where the 745  
personnel performing the work are not under the direct control of 746  
the purchaser. 747

(2) Medical and health care services. 748

(3) Supplying personnel to a purchaser pursuant to a contract 749  
of at least one year between the service provider and the 750  
purchaser that specifies that each employee covered under the 751  
contract is assigned to the purchaser on a permanent basis. 752

(4) Transactions between members of an affiliated group, as defined in division (B)(3)(e) of this section. 753  
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(5) Transactions where the personnel so provided or supplied by a provider or supplier to a purchaser of an employment service are then provided or supplied by that purchaser to a third party as an employment service, except "employment service" does include the transaction between that purchaser and the third party. 755  
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(KK) "Employment placement service" means locating or finding employment for a person or finding or locating an employee to fill an available position. 760  
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(LL) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or structure, or the area surrounding a building or structure, and includes activities to inspect, detect, or prevent vermin infestation of a building or structure. 763  
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(MM) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise. 768  
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(NN) "Recreation and sports club service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a recreation and sports club, which entitles the member to use the facilities of the organization. "Recreation and sports club" means an organization that has ownership of, or controls or leases on a continuing, long-term basis, the facilities used by its members 775  
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and includes an aviation club, gun or shooting club, yacht club, 783  
 card club, swimming club, tennis club, golf club, country club, 784  
 riding club, amateur sports club, or similar organization. 785

(OO) "Livestock" means farm animals commonly raised for food, 786  
 food production, or other agricultural purposes, including, but 787  
 not limited to, cattle, sheep, goats, swine, poultry, and captive 788  
 deer. "Livestock" does not include invertebrates, amphibians, 789  
 reptiles, domestic pets, animals for use in laboratories or for 790  
 exhibition, or other animals not commonly raised for food or food 791  
 production. 792

(PP) "Livestock structure" means a building or structure used 793  
 exclusively for the housing, raising, feeding, or sheltering of 794  
 livestock, and includes feed storage or handling structures and 795  
 structures for livestock waste handling. 796

(QQ) "Horticulture" means the growing, cultivation, and 797  
 production of flowers, fruits, herbs, vegetables, sod, mushrooms, 798  
 and nursery stock. As used in this division, "nursery stock" has 799  
 the same meaning as in section 927.51 of the Revised Code. 800

(RR) "Horticulture structure" means a building or structure 801  
 used exclusively for the commercial growing, raising, or 802  
 overwintering of horticultural products, and includes the area 803  
 used for stocking, storing, and packing horticultural products 804  
 when done in conjunction with the production of those products. 805

(SS) "Newspaper" means an unbound publication bearing a title 806  
 or name that is regularly published, at least as frequently as 807  
 biweekly, and distributed from a fixed place of business to the 808  
 public in a specific geographic area, and that contains a 809  
 substantial amount of news matter of international, national, or 810  
 local events of interest to the general public. 811

(TT)(1) "Feminine hygiene products" means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include grooming and hygiene products. 812  
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(2) "Grooming and hygiene products" means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether any of these products are over-the-counter drugs. 817  
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(3) "Over-the-counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, which label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation. 821  
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(UU)(1) "Lease" or "rental" means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. "Lease" or "rental" includes future options to purchase or extend, and agreements described in 26 U.S.C. 7701(h)(1) covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon the sale or disposition of the property. "Lease" or "rental" does not include: 826  
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(a) A transfer of possession or control of tangible personal property under a security agreement or a deferred payment plan that requires the transfer of title upon completion of the required payments; 834  
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(b) A transfer of possession or control of tangible personal property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or 838  
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one per cent of the total required payments; 842

(c) Providing tangible personal property along with an 843  
operator for a fixed or indefinite period of time, if the operator 844  
is necessary for the property to perform as designed. For purposes 845  
of this division, the operator must do more than maintain, 846  
inspect, or set up the tangible personal property. 847

(2) "Lease" and "rental," as defined in division (UU) of this 848  
section, shall not apply to leases or rentals that exist before 849  
June 26, 2003. 850

(3) "Lease" and "rental" have the same meaning as in division 851  
(UU)(1) of this section regardless of whether a transaction is 852  
characterized as a lease or rental under generally accepted 853  
accounting principles, the Internal Revenue Code, Title XIII of 854  
the Revised Code, or other federal, state, or local laws. 855

(VV) "Mobile telecommunications service" has the same meaning 856  
as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 857  
106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, 858  
on and after August 1, 2003, includes related fees and ancillary 859  
services, including universal service fees, detailed billing 860  
service, directory assistance, service initiation, voice mail 861  
service, and vertical services, such as caller ID and three-way 862  
calling. 863

(WW) "Certified service provider" has the same meaning as in 864  
section 5740.01 of the Revised Code. 865

(XX) "Satellite broadcasting service" means the distribution 866  
or broadcasting of programming or services by satellite directly 867  
to the subscriber's receiving equipment without the use of ground 868  
receiving or distribution equipment, except the subscriber's 869  
receiving equipment or equipment used in the uplink process to the 870

satellite, and includes all service and rental charges, premium 871  
channels or other special services, installation and repair 872  
service charges, and any other charges having any connection with 873  
the provision of the satellite broadcasting service. 874

(YY) "Tangible personal property" means personal property 875  
that can be seen, weighed, measured, felt, or touched, or that is 876  
in any other manner perceptible to the senses. For purposes of 877  
this chapter and Chapter 5741. of the Revised Code, "tangible 878  
personal property" includes motor vehicles, electricity, water, 879  
gas, steam, and prewritten computer software. 880

(ZZ) "Municipal gas utility" means a municipal corporation 881  
that owns or operates a system for the distribution of natural 882  
gas. 883

(AAA) "Computer" means an electronic device that accepts 884  
information in digital or similar form and manipulates it for a 885  
result based on a sequence of instructions. 886

(BBB) "Computer software" means a set of coded instructions 887  
designed to cause a computer or automatic data processing 888  
equipment to perform a task. 889

(CCC) "Delivered electronically" means delivery of computer 890  
software from the seller to the purchaser by means other than 891  
tangible storage media. 892

(DDD) "Prewritten computer software" means computer software, 893  
including prewritten upgrades, that is not designed and developed 894  
by the author or other creator to the specifications of a specific 895  
purchaser. The combining of two or more prewritten computer 896  
software programs or prewritten portions thereof does not cause 897  
the combination to be other than prewritten computer software. 898  
"Prewritten computer software" includes software designed and 899

developed by the author or other creator to the specifications of  
a specific purchaser when it is sold to a person other than the  
purchaser. If a person modifies or enhances computer software of  
which the person is not the author or creator, the person shall be  
deemed to be the author or creator only of such person's  
modifications or enhancements. Prewritten computer software or a  
prewritten portion thereof that is modified or enhanced to any  
degree, where such modification or enhancement is designed and  
developed to the specifications of a specific purchaser, remains  
prewritten computer software; provided, however, that where there  
is a reasonable, separately stated charge or an invoice or other  
statement of the price given to the purchaser for the modification  
or enhancement, the modification or enhancement shall not  
constitute prewritten computer software.

(EEE)(1) "Food" means substances, whether in liquid,  
concentrated, solid, frozen, dried, or dehydrated form, that are  
sold for ingestion or chewing by humans and are consumed for their  
taste or nutritional value. "Food" does not include alcoholic  
beverages, dietary supplements, soft drinks, or tobacco.

(2) As used in division (EEE)(1) of this section:

(a) "Alcoholic beverages" means beverages that are suitable  
for human consumption and contain one-half of one per cent or more  
of alcohol by volume.

(b) "Dietary supplements" means any product, other than  
tobacco, that is intended to supplement the diet and that is  
intended for ingestion in tablet, capsule, powder, softgel,  
gelcap, or liquid form, or, if not intended for ingestion in such  
a form, is not represented as conventional food for use as a sole  
item of a meal or of the diet; that is required to be labeled as a  
dietary supplement, identifiable by the "supplement facts" box

found on the label, as required by 21 C.F.R. 101.36; and that	930
contains one or more of the following dietary ingredients:	931
(i) A vitamin;	932
(ii) A mineral;	933
(iii) An herb or other botanical;	934
(iv) An amino acid;	935
(v) A dietary substance for use by humans to supplement the	936
diet by increasing the total dietary intake;	937
(vi) A concentrate, metabolite, constituent, extract, or	938
combination of any ingredient described in divisions	939
(EEE)(2)(b)(i) to (v) of this section.	940
(c) "Soft drinks" means nonalcoholic beverages that contain	941
natural or artificial sweeteners. "Soft drinks" does not include	942
beverages that contain milk or milk products, soy, rice, or	943
similar milk substitutes, or that contains greater than fifty per	944
cent vegetable or fruit juice by volume.	945
(d) "Tobacco" means cigarettes, cigars, chewing or pipe	946
tobacco, or any other item that contains tobacco.	947
(FFF) "Drug" means a compound, substance, or preparation, and	948
any component of a compound, substance, or preparation, other than	949
food, dietary supplements, or alcoholic beverages that is	950
recognized in the official United States pharmacopoeia, official	951
homeopathic pharmacopoeia of the United States, or official	952
national formulary, and supplements to them; is intended for use	953
in the diagnosis, cure, mitigation, treatment, or prevention of	954
disease; or is intended to affect the structure or any function of	955
the body.	956
(GGG) "Prescription" means an order, formula, or recipe	957

issued in any form of oral, written, electronic, or other means of 958  
transmission by a duly licensed practitioner authorized by the 959  
laws of this state to issue a prescription. 960

(HHH) "Durable medical equipment" means equipment, including 961  
repair and replacement parts for such equipment, that can 962  
withstand repeated use, is primarily and customarily used to serve 963  
a medical purpose, generally is not useful to a person in the 964  
absence of illness or injury, and is not worn in or on the body. 965  
"Durable medical equipment" does not include mobility enhancing 966  
equipment. 967

(III) "Mobility enhancing equipment" means equipment, 968  
including repair and replacement parts for such equipment, that is 969  
primarily and customarily used to provide or increase the ability 970  
to move from one place to another and is appropriate for use 971  
either in a home or a motor vehicle, that is not generally used by 972  
persons with normal mobility, and that does not include any motor 973  
vehicle or equipment on a motor vehicle normally provided by a 974  
motor vehicle manufacturer. "Mobility enhancing equipment" does 975  
not include durable medical equipment. 976

(JJJ) "Prosthetic device" means a replacement, corrective, or 977  
supportive device, including repair and replacement parts for the 978  
device, worn on or in the human body to artificially replace a 979  
missing portion of the body, prevent or correct physical deformity 980  
or malfunction, or support a weak or deformed portion of the body. 981  
As used in this division, before July 1, 2019, "prosthetic device" 982  
does not include corrective eyeglasses, contact lenses, or dental 983  
prosthesis. On or after July 1, 2019, "prosthetic device" does not 984  
include dental prosthesis but does include corrective eyeglasses 985  
or contact lenses. 986

(KKK)(1) "Fractional aircraft ownership program" means a 987

program in which persons within an affiliated group sell and	988
manage fractional ownership program aircraft, provided that at	989
least one hundred airworthy aircraft are operated in the program	990
and the program meets all of the following criteria:	991
(a) Management services are provided by at least one program	992
manager within an affiliated group on behalf of the fractional	993
owners.	994
(b) Each program aircraft is owned or possessed by at least	995
one fractional owner.	996
(c) Each fractional owner owns or possesses at least a	997
one-sixteenth interest in at least one fixed-wing program	998
aircraft.	999
(d) A dry-lease aircraft interchange arrangement is in effect	1000
among all of the fractional owners.	1001
(e) Multi-year program agreements are in effect regarding the	1002
fractional ownership, management services, and dry-lease aircraft	1003
interchange arrangement aspects of the program.	1004
(2) As used in division (KKK)(1) of this section:	1005
(a) "Affiliated group" has the same meaning as in division	1006
(B)(3)(e) of this section.	1007
(b) "Fractional owner" means a person that owns or possesses	1008
at least a one-sixteenth interest in a program aircraft and has	1009
entered into the agreements described in division (KKK)(1)(e) of	1010
this section.	1011
(c) "Fractional ownership program aircraft" or "program	1012
aircraft" means a turbojet aircraft that is owned or possessed by	1013
a fractional owner and that has been included in a dry-lease	1014
aircraft interchange arrangement and agreement under divisions	1015

(KKK)(1)(d) and (e) of this section, or an aircraft a program 1016  
 manager owns or possesses primarily for use in a fractional 1017  
 aircraft ownership program. 1018

(d) "Management services" means administrative and aviation 1019  
 support services furnished under a fractional aircraft ownership 1020  
 program in accordance with a management services agreement under 1021  
 division (KKK)(1)(e) of this section, and offered by the program 1022  
 manager to the fractional owners, including, at a minimum, the 1023  
 establishment and implementation of safety guidelines; the 1024  
 coordination of the scheduling of the program aircraft and crews; 1025  
 program aircraft maintenance; program aircraft insurance; crew 1026  
 training for crews employed, furnished, or contracted by the 1027  
 program manager or the fractional owner; the satisfaction of 1028  
 record-keeping requirements; and the development and use of an 1029  
 operations manual and a maintenance manual for the fractional 1030  
 aircraft ownership program. 1031

(e) "Program manager" means the person that offers management 1032  
 services to fractional owners pursuant to a management services 1033  
 agreement under division (KKK)(1)(e) of this section. 1034

(LLL) "Electronic publishing" means providing access to one 1035  
 or more of the following primarily for business customers, 1036  
 including the federal government or a state government or a 1037  
 political subdivision thereof, to conduct research: news; 1038  
 business, financial, legal, consumer, or credit materials; 1039  
 editorials, columns, reader commentary, or features; photos or 1040  
 images; archival or research material; legal notices, identity 1041  
 verification, or public records; scientific, educational, 1042  
 instructional, technical, professional, trade, or other literary 1043  
 materials; or other similar information which has been gathered 1044  
 and made available by the provider to the consumer in an 1045

electronic format. Providing electronic publishing includes the 1046  
 functions necessary for the acquisition, formatting, editing, 1047  
 storage, and dissemination of data or information that is the 1048  
 subject of a sale. 1049

(MMM) "Medicaid health insuring corporation" means a health 1050  
 insuring corporation that holds a certificate of authority under 1051  
 Chapter 1751. of the Revised Code and is under contract with the 1052  
 department of medicaid pursuant to section 5167.10 of the Revised 1053  
 Code. 1054

(NNN) "Managed care premium" means any premium, capitation, 1055  
 or other payment a medicaid health insuring corporation receives 1056  
 for providing or arranging for the provision of health care 1057  
 services to its members or enrollees residing in this state. 1058

(OOO) "Captive deer" means deer and other cervidae that have 1059  
 been legally acquired, or their offspring, that are privately 1060  
 owned for agricultural or farming purposes. 1061

(PPP) "Gift card" means a document, card, certificate, or 1062  
 other record, whether tangible or intangible, that may be redeemed 1063  
 by a consumer for a dollar value when making a purchase of 1064  
 tangible personal property or services. 1065

(QQQ) "Specified digital product" means an electronically 1066  
 transferred digital audiovisual work, digital audio work, or 1067  
 digital book. 1068

As used in division (QQQ) of this section: 1069

(1) "Digital audiovisual work" means a series of related 1070  
 images that, when shown in succession, impart an impression of 1071  
 motion, together with accompanying sounds, if any. 1072

(2) "Digital audio work" means a work that results from the 1073  
 fixation of a series of musical, spoken, or other sounds, 1074

including digitized sound files that are downloaded onto a device 1075  
 and that may be used to alert the customer with respect to a 1076  
 communication. 1077

(3) "Digital book" means a work that is generally recognized 1078  
 in the ordinary and usual sense as a book. 1079

(4) "Electronically transferred" means obtained by the 1080  
 purchaser by means other than tangible storage media. 1081

(RRR) "Digital advertising services" means providing access, 1082  
 by means of telecommunications equipment, to computer equipment 1083  
 that is used to enter, upload, download, review, manipulate, 1084  
 store, add, or delete data for the purpose of electronically 1085  
 displaying, delivering, placing, or transferring promotional 1086  
 advertisements to potential customers about products or services 1087  
 or about industry or business brands. 1088

(SSS) "Peer-to-peer car sharing program" has the same meaning 1089  
 as in section 4516.01 of the Revised Code. 1090

**Sec. 5739.012.** (A) As used in this section: 1091

(1) "Bundled transaction" means the retail sale of two or 1092  
 more products, except real property and services to real property, 1093  
 where the products are otherwise distinct and identifiable 1094  
 products and are sold for one non-itemized price. "Bundled 1095  
 transaction" does not include the sale of any products in which 1096  
 the sales price varies, or is negotiable, based on the selection 1097  
 by the consumer of the products included in the transaction. 1098

As used in division (A)(1) of this section: 1099

(a) "Distinct and identifiable products" does not include any 1100  
 of the following: 1101

(i) Packaging, including containers, boxes, sacks, bags, and 1102

bottles, and packaging materials, including wrapping, labels, 1103  
tags, and instruction guides that accompany the retail sale of the 1104  
products and are incidental or immaterial to the retail sale 1105  
thereof; 1106

(ii) A product provided free of charge with the required 1107  
purchase of another product. A product is provided free of charge 1108  
if the sales price of the product purchased does not vary 1109  
depending on the inclusion of the product provided free of charge. 1110

(iii) Items included in the definition of "price" under 1111  
division (H) of section 5739.01 of the Revised Code. 1112

(b) "One non-itemized price" does not include a price that is 1113  
separately identified by product on binding sales or other 1114  
supporting sales-related documents made available to the consumer 1115  
in paper or electronic form, including, but not limited to, an 1116  
invoice, bill of sale, receipt, contract, service agreement, lease 1117  
agreement, periodic notice of rates and services, rate card, or 1118  
price list. 1119

(2) "De minimis" means the vendor's or seller's purchase 1120  
price or sales price of taxable products is ten per cent or less 1121  
of the total purchase price or sales price of bundled products. 1122  
Vendors and sellers shall use either the purchase price or the 1123  
sales price of the products to determine if the taxable products 1124  
are de minimis, and shall use the full term of a service contract 1125  
to determine if the taxable products are de minimis. Vendors and 1126  
sellers shall not use a combination of the purchase price and 1127  
sales price of the products to determine if the taxable products 1128  
are de minimis. 1129

~~(3) "Over the counter drug" means a drug that contains a 1130  
label that identifies the product as a drug as required by 21 1131  
C.F.R. 201.66, and the label includes either a "Drug Facts" panel 1132~~

~~or a statement of the active ingredients with a list of those ingredients contained in the drug.~~ 1133  
1134

(B) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is any of the following: 1135  
1136  
1137

(1) A retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; 1138  
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1141

(2) A retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service; 1142  
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(3) A transaction that includes taxable products and nontaxable products, and the purchase price or sales price of the taxable products is de minimis; 1147  
1148  
1149

(4) A retail sale of exempt tangible personal property and taxable tangible personal property where the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies, and the vendor's or seller's purchase price or sales price of the taxable tangible personal property is fifty per cent or less of the total purchase price or sales price of the bundled tangible personal property. Vendors and sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty per cent determination for a transaction. 1150  
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(C) In the case of a bundled transaction that includes 1161

telecommunications service, ancillary service, internet access, or 1162  
audio or video programming service: 1163

(1) If the price is attributable to products that are taxable 1164  
and products that are nontaxable, the portion of the price 1165  
attributable to the nontaxable products shall be subject to tax 1166  
unless the provider, by reasonable and verifiable standards, can 1167  
identify the portion from its books and records that are kept in 1168  
the regular course of business for other purposes, including, but 1169  
not limited to, non-tax purposes. 1170

(2) If the price is attributable to products that are subject 1171  
to tax at different tax rates, the total price shall be treated as 1172  
attributable to the products subject to tax at the highest tax 1173  
rate unless the provider can identify by reasonable and verifiable 1174  
standards the portion of the price attributable to the products 1175  
subject to tax at the lower rate from its books and records that 1176  
are kept in the regular course of business for other purposes, 1177  
including, but not limited to, non-tax purposes. 1178

(D) In all other cases of bundled transactions, the 1179  
taxability of the transaction shall be determined by the true 1180  
object of the consumer entering into the transaction. 1181

**Sec. 5739.02.** For the purpose of providing revenue with which 1182  
to meet the needs of the state, for the use of the general revenue 1183  
fund of the state, for the purpose of securing a thorough and 1184  
efficient system of common schools throughout the state, for the 1185  
purpose of affording revenues, in addition to those from general 1186  
property taxes, permitted under constitutional limitations, and 1187  
from other sources, for the support of local governmental 1188  
functions, and for the purpose of reimbursing the state for the 1189  
expense of administering this chapter, an excise tax is hereby 1190

levied on each retail sale made in this state. 1191

(A)(1) The tax shall be collected as provided in section 1192  
5739.025 of the Revised Code. The rate of the tax shall be five 1193  
and three-fourths per cent. The tax applies and is collectible 1194  
when the sale is made, regardless of the time when the price is 1195  
paid or delivered. 1196

(2) In the case of the lease or rental, with a fixed term of 1197  
more than thirty days or an indefinite term with a minimum period 1198  
of more than thirty days, of any motor vehicles designed by the 1199  
manufacturer to carry a load of not more than one ton, watercraft, 1200  
outboard motor, or aircraft, or of any tangible personal property, 1201  
other than motor vehicles designed by the manufacturer to carry a 1202  
load of more than one ton, to be used by the lessee or renter 1203  
primarily for business purposes, the tax shall be collected by the 1204  
vendor at the time the lease or rental is consummated and shall be 1205  
calculated by the vendor on the basis of the total amount to be 1206  
paid by the lessee or renter under the lease agreement. If the 1207  
total amount of the consideration for the lease or rental includes 1208  
amounts that are not calculated at the time the lease or rental is 1209  
executed, the tax shall be calculated and collected by the vendor 1210  
at the time such amounts are billed to the lessee or renter. In 1211  
the case of an open-end lease or rental, the tax shall be 1212  
calculated by the vendor on the basis of the total amount to be 1213  
paid during the initial fixed term of the lease or rental, and for 1214  
each subsequent renewal period as it comes due. As used in this 1215  
division, "motor vehicle" has the same meaning as in section 1216  
4501.01 of the Revised Code, and "watercraft" includes an outdrive 1217  
unit attached to the watercraft. 1218

A lease with a renewal clause and a termination penalty or 1219  
similar provision that applies if the renewal clause is not 1220

exercised is presumed to be a sham transaction. In such a case, 1221  
the tax shall be calculated and paid on the basis of the entire 1222  
length of the lease period, including any renewal periods, until 1223  
the termination penalty or similar provision no longer applies. 1224  
The taxpayer shall bear the burden, by a preponderance of the 1225  
evidence, that the transaction or series of transactions is not a 1226  
sham transaction. 1227

(3) Except as provided in division (A)(2) of this section, in 1228  
the case of a sale, the price of which consists in whole or in 1229  
part of the lease or rental of tangible personal property, the tax 1230  
shall be measured by the installments of that lease or rental. 1231

(4) In the case of a sale of a physical fitness facility 1232  
service or recreation and sports club service, the price of which 1233  
consists in whole or in part of a membership for the receipt of 1234  
the benefit of the service, the tax applicable to the sale shall 1235  
be measured by the installments thereof. 1236

(B) The tax does not apply to the following: 1237

(1) Sales to the state or any of its political subdivisions, 1238  
or to any other state or its political subdivisions if the laws of 1239  
that state exempt from taxation sales made to this state and its 1240  
political subdivisions; 1241

(2) Sales of food for human consumption off the premises 1242  
where sold; 1243

(3) Sales of food sold to students only in a cafeteria, 1244  
dormitory, fraternity, or sorority maintained in a private, 1245  
public, or parochial school, college, or university; 1246

(4) Sales of newspapers and sales or transfers of magazines 1247  
distributed as controlled circulation publications; 1248

(5) The furnishing, preparing, or serving of meals without 1249

charge by an employer to an employee provided the employer records 1250  
 the meals as part compensation for services performed or work 1251  
 done; 1252

(6)(a) Sales of motor fuel upon receipt, use, distribution, 1253  
 or sale of which in this state a tax is imposed by the law of this 1254  
 state, but this exemption shall not apply to the sale of motor 1255  
 fuel on which a refund of the tax is allowable under division (A) 1256  
 of section 5735.14 of the Revised Code; and the tax commissioner 1257  
 may deduct the amount of tax levied by this section applicable to 1258  
 the price of motor fuel when granting a refund of motor fuel tax 1259  
 pursuant to division (A) of section 5735.14 of the Revised Code 1260  
 and shall cause the amount deducted to be paid into the general 1261  
 revenue fund of this state; 1262

(b) Sales of motor fuel other than that described in division 1263  
 (B)(6)(a) of this section and used for powering a refrigeration 1264  
 unit on a vehicle other than one used primarily to provide comfort 1265  
 to the operator or occupants of the vehicle. 1266

(7) Sales of natural gas by a natural gas company or 1267  
 municipal gas utility, of water by a water-works company, or of 1268  
 steam by a heating company, if in each case the thing sold is 1269  
 delivered to consumers through pipes or conduits, and all sales of 1270  
 communications services by a telegraph company, all terms as 1271  
 defined in section 5727.01 of the Revised Code, and sales of 1272  
 electricity delivered through wires; 1273

(8) Casual sales by a person, or auctioneer employed directly 1274  
 by the person to conduct such sales, except as to such sales of 1275  
 motor vehicles, watercraft or outboard motors required to be 1276  
 titled under section 1548.06 of the Revised Code, watercraft 1277  
 documented with the United States coast guard, snowmobiles, and 1278  
 all-purpose vehicles as defined in section 4519.01 of the Revised 1279

Code;	1280
(9)(a) Sales of services or tangible personal property, other	1281
than motor vehicles, mobile homes, and manufactured homes, by	1282
churches, organizations exempt from taxation under section	1283
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit	1284
organizations operated exclusively for charitable purposes as	1285
defined in division (B)(12) of this section, provided that the	1286
number of days on which such tangible personal property or	1287
services, other than items never subject to the tax, are sold does	1288
not exceed six in any calendar year, except as otherwise provided	1289
in division (B)(9)(b) of this section. If the number of days on	1290
which such sales are made exceeds six in any calendar year, the	1291
church or organization shall be considered to be engaged in	1292
business and all subsequent sales by it shall be subject to the	1293
tax. In counting the number of days, all sales by groups within a	1294
church or within an organization shall be considered to be sales	1295
of that church or organization.	1296
(b) The limitation on the number of days on which tax-exempt	1297
sales may be made by a church or organization under division	1298
(B)(9)(a) of this section does not apply to sales made by student	1299
clubs and other groups of students of a primary or secondary	1300
school, or a parent-teacher association, booster group, or similar	1301
organization that raises money to support or fund curricular or	1302
extracurricular activities of a primary or secondary school.	1303
(c) Divisions (B)(9)(a) and (b) of this section do not apply	1304
to sales by a noncommercial educational radio or television	1305
broadcasting station.	1306
(10) Sales not within the taxing power of this state under	1307
the Constitution or laws of the United States or the Constitution	1308
of this state;	1309

(11) Except for transactions that are sales under division 1310  
 (B)(3)(r) of section 5739.01 of the Revised Code, the 1311  
 transportation of persons or property, unless the transportation 1312  
 is by a private investigation and security service; 1313

(12) Sales of tangible personal property or services to 1314  
 churches, to organizations exempt from taxation under section 1315  
 501(c)(3) of the Internal Revenue Code of 1986, and to any other 1316  
 nonprofit organizations operated exclusively for charitable 1317  
 purposes in this state, no part of the net income of which inures 1318  
 to the benefit of any private shareholder or individual, and no 1319  
 substantial part of the activities of which consists of carrying 1320  
 on propaganda or otherwise attempting to influence legislation; 1321  
 sales to offices administering one or more homes for the aged or 1322  
 one or more hospital facilities exempt under section 140.08 of the 1323  
 Revised Code; and sales to organizations described in division (D) 1324  
 of section 5709.12 of the Revised Code. 1325

"Charitable purposes" means the relief of poverty; the 1326  
 improvement of health through the alleviation of illness, disease, 1327  
 or injury; the operation of an organization exclusively for the 1328  
 provision of professional, laundry, printing, and purchasing 1329  
 services to hospitals or charitable institutions; the operation of 1330  
 a home for the aged, as defined in section 5701.13 of the Revised 1331  
 Code; the operation of a radio or television broadcasting station 1332  
 that is licensed by the federal communications commission as a 1333  
 noncommercial educational radio or television station; the 1334  
 operation of a nonprofit animal adoption service or a county 1335  
 humane society; the promotion of education by an institution of 1336  
 learning that maintains a faculty of qualified instructors, 1337  
 teaches regular continuous courses of study, and confers a 1338  
 recognized diploma upon completion of a specific curriculum; the 1339  
 operation of a parent-teacher association, booster group, or 1340

similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

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

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious

education, or a building used exclusively for charitable purposes 1372  
 under a construction contract with an organization whose purpose 1373  
 is as described in division (B)(12) of this section; building 1374  
 materials and services sold to a construction contractor for 1375  
 incorporation into a building under a construction contract with 1376  
 an organization exempt from taxation under section 501(c)(3) of 1377  
 the Internal Revenue Code of 1986 when the building is to be used 1378  
 exclusively for the organization's exempt purposes; building and 1379  
 construction materials sold for incorporation into the original 1380  
 construction of a sports facility under section 307.696 of the 1381  
 Revised Code; building and construction materials and services 1382  
 sold to a construction contractor for incorporation into real 1383  
 property outside this state if such materials and services, when 1384  
 sold to a construction contractor in the state in which the real 1385  
 property is located for incorporation into real property in that 1386  
 state, would be exempt from a tax on sales levied by that state; 1387  
 building and construction materials for incorporation into a 1388  
 transportation facility pursuant to a public-private agreement 1389  
 entered into under sections 5501.70 to 5501.83 of the Revised 1390  
 Code; and, until one calendar year after the construction of a 1391  
 convention center that qualifies for property tax exemption under 1392  
 section 5709.084 of the Revised Code is completed, building and 1393  
 construction materials and services sold to a construction 1394  
 contractor for incorporation into the real property comprising 1395  
 that convention center; 1396

(14) Sales of ships or vessels or rail rolling stock used or 1397  
 to be used principally in interstate or foreign commerce, and 1398  
 repairs, alterations, fuel, and lubricants for such ships or 1399  
 vessels or rail rolling stock; 1400

(15) Sales to persons primarily engaged in any of the 1401  
 activities mentioned in division (B)(42)(a), (g), or (h) of this 1402

section, to persons engaged in making retail sales, or to persons 1403  
 who purchase for sale from a manufacturer tangible personal 1404  
 property that was produced by the manufacturer in accordance with 1405  
 specific designs provided by the purchaser, of packages, including 1406  
 material, labels, and parts for packages, and of machinery, 1407  
 equipment, and material for use primarily in packaging tangible 1408  
 personal property produced for sale, including any machinery, 1409  
 equipment, and supplies used to make labels or packages, to 1410  
 prepare packages or products for labeling, or to label packages or 1411  
 products, by or on the order of the person doing the packaging, or 1412  
 sold at retail. "Packages" includes bags, baskets, cartons, 1413  
 crates, boxes, cans, bottles, bindings, wrappings, and other 1414  
 similar devices and containers, but does not include motor 1415  
 vehicles or bulk tanks, trailers, or similar devices attached to 1416  
 motor vehicles. "Packaging" means placing in a package. Division 1417  
 (B)(15) of this section does not apply to persons engaged in 1418  
 highway transportation for hire. 1419

(16) Sales of food to persons using supplemental nutrition 1420  
 assistance program benefits to purchase the food. As used in this 1421  
 division, "food" has the same meaning as in 7 U.S.C. 2012 and 1422  
 federal regulations adopted pursuant to the Food and Nutrition Act 1423  
 of 2008. 1424

(17) Sales to persons engaged in farming, agriculture, 1425  
 horticulture, or floriculture, of tangible personal property for 1426  
 use or consumption primarily in the production by farming, 1427  
 agriculture, horticulture, or floriculture of other tangible 1428  
 personal property for use or consumption primarily in the 1429  
 production of tangible personal property for sale by farming, 1430  
 agriculture, horticulture, or floriculture; or material and parts 1431  
 for incorporation into any such tangible personal property for use 1432  
 or consumption in production; and of tangible personal property 1433

for such use or consumption in the conditioning or holding of 1434  
 products produced by and for such use, consumption, or sale by 1435  
 persons engaged in farming, agriculture, horticulture, or 1436  
 floriculture, except where such property is incorporated into real 1437  
 property; 1438

(18) Sales of drugs for a human being that may be dispensed 1439  
 only pursuant to a prescription; insulin as recognized in the 1440  
 official United States pharmacopoeia; urine and blood testing 1441  
 materials when used by diabetics or persons with hypoglycemia to 1442  
 test for glucose or acetone; hypodermic syringes and needles when 1443  
 used by diabetics for insulin injections; epoetin alfa when 1444  
 purchased for use in the treatment of persons with medical 1445  
 disease; hospital beds when purchased by hospitals, nursing homes, 1446  
 or other medical facilities; and medical oxygen and medical 1447  
 oxygen-dispensing equipment when purchased by hospitals, nursing 1448  
 homes, or other medical facilities; 1449

(19) Sales of prosthetic devices, durable medical equipment 1450  
 for home use, or mobility enhancing equipment, when made pursuant 1451  
 to a prescription and when such devices or equipment are for use 1452  
 by a human being. 1453

(20) Sales of emergency and fire protection vehicles and 1454  
 equipment to nonprofit organizations for use solely in providing 1455  
 fire protection and emergency services, including trauma care and 1456  
 emergency medical services, for political subdivisions of the 1457  
 state; 1458

(21) Sales of tangible personal property manufactured in this 1459  
 state, if sold by the manufacturer in this state to a retailer for 1460  
 use in the retail business of the retailer outside of this state 1461  
 and if possession is taken from the manufacturer by the purchaser 1462  
 within this state for the sole purpose of immediately removing the 1463

same from this state in a vehicle owned by the purchaser;	1464
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	1465 1466 1467 1468 1469
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	1470 1471 1472
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.	1473 1474 1475 1476 1477 1478 1479 1480 1481 1482 1483 1484 1485 1486 1487
(25)(a) Sales of water to a consumer for residential use;	1488
(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.	1489 1490 1491 1492

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	1493 1494
(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:	1495 1496 1497 1498
(a) To prepare food for human consumption for sale;	1499
(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;	1500 1501 1502 1503
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1504 1505
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1506 1507
(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;	1508 1509 1510 1511
(30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;	1512 1513 1514
(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;	1515 1516 1517
(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	1518 1519 1520

belonging to others by a person engaged in highway transportation 1521  
 for hire, except for packages and packaging used for the 1522  
 transportation of tangible personal property; 1523

(33) Sales to the state headquarters of any veterans' 1524  
 organization in this state that is either incorporated and issued 1525  
 a charter by the congress of the United States or is recognized by 1526  
 the United States veterans administration, for use by the 1527  
 headquarters; 1528

(34) Sales to a telecommunications service vendor, mobile 1529  
 telecommunications service vendor, or satellite broadcasting 1530  
 service vendor of tangible personal property and services used 1531  
 directly and primarily in transmitting, receiving, switching, or 1532  
 recording any interactive, one- or two-way electromagnetic 1533  
 communications, including voice, image, data, and information, 1534  
 through the use of any medium, including, but not limited to, 1535  
 poles, wires, cables, switching equipment, computers, and record 1536  
 storage devices and media, and component parts for the tangible 1537  
 personal property. The exemption provided in this division shall 1538  
 be in lieu of all other exemptions under division (B)(42)(a) or 1539  
 (n) of this section to which the vendor may otherwise be entitled, 1540  
 based upon the use of the thing purchased in providing the 1541  
 telecommunications, mobile telecommunications, or satellite 1542  
 broadcasting service. 1543

(35)(a) Sales where the purpose of the consumer is to use or 1544  
 consume the things transferred in making retail sales and 1545  
 consisting of newspaper inserts, catalogues, coupons, flyers, gift 1546  
 certificates, or other advertising material that prices and 1547  
 describes tangible personal property offered for retail sale. 1548

(b) Sales to direct marketing vendors of preliminary 1549  
 materials such as photographs, artwork, and typesetting that will 1550

be used in printing advertising material; and of printed matter 1551  
that offers free merchandise or chances to win sweepstake prizes 1552  
and that is mailed to potential customers with advertising 1553  
material described in division (B)(35)(a) of this section; 1554

(c) Sales of equipment such as telephones, computers, 1555  
facsimile machines, and similar tangible personal property 1556  
primarily used to accept orders for direct marketing retail sales. 1557

(d) Sales of automatic food vending machines that preserve 1558  
food with a shelf life of forty-five days or less by refrigeration 1559  
and dispense it to the consumer. 1560

For purposes of division (B)(35) of this section, "direct 1561  
marketing" means the method of selling where consumers order 1562  
tangible personal property by United States mail, delivery 1563  
service, or telecommunication and the vendor delivers or ships the 1564  
tangible personal property sold to the consumer from a warehouse, 1565  
catalogue distribution center, or similar fulfillment facility by 1566  
means of the United States mail, delivery service, or common 1567  
carrier. 1568

(36) Sales to a person engaged in the business of 1569  
horticulture or producing livestock of materials to be 1570  
incorporated into a horticulture structure or livestock structure; 1571

(37) Sales of personal computers, computer monitors, computer 1572  
keyboards, modems, and other peripheral computer equipment to an 1573  
individual who is licensed or certified to teach in an elementary 1574  
or a secondary school in this state for use by that individual in 1575  
preparation for teaching elementary or secondary school students; 1576

(38) Sales of tangible personal property that is not required 1577  
to be registered or licensed under the laws of this state to a 1578  
citizen of a foreign nation that is not a citizen of the United 1579

States, provided the property is delivered to a person in this 1580  
state that is not a related member of the purchaser, is physically 1581  
present in this state for the sole purpose of temporary storage 1582  
and package consolidation, and is subsequently delivered to the 1583  
purchaser at a delivery address in a foreign nation. As used in 1584  
division (B)(38) of this section, "related member" has the same 1585  
meaning as in section 5733.042 of the Revised Code, and "temporary 1586  
storage" means the storage of tangible personal property for a 1587  
period of not more than sixty days. 1588

(39) Sales of used manufactured homes and used mobile homes, 1589  
as defined in section 5739.0210 of the Revised Code, made on or 1590  
after January 1, 2000; 1591

(40) Sales of tangible personal property and services to a 1592  
provider of electricity used or consumed directly and primarily in 1593  
generating, transmitting, or distributing electricity for use by 1594  
others, including property that is or is to be incorporated into 1595  
and will become a part of the consumer's production, transmission, 1596  
or distribution system and that retains its classification as 1597  
tangible personal property after incorporation; fuel or power used 1598  
in the production, transmission, or distribution of electricity; 1599  
energy conversion equipment as defined in section 5727.01 of the 1600  
Revised Code; and tangible personal property and services used in 1601  
the repair and maintenance of the production, transmission, or 1602  
distribution system, including only those motor vehicles as are 1603  
specially designed and equipped for such use. The exemption 1604  
provided in this division shall be in lieu of all other exemptions 1605  
in division (B)(42)(a) or (n) of this section to which a provider 1606  
of electricity may otherwise be entitled based on the use of the 1607  
tangible personal property or service purchased in generating, 1608  
transmitting, or distributing electricity. 1609

(41) Sales to a person providing services under division	1610
(B)(3)(r) of section 5739.01 of the Revised Code of tangible	1611
personal property and services used directly and primarily in	1612
providing taxable services under that section.	1613
(42) Sales where the purpose of the purchaser is to do any of	1614
the following:	1615
(a) To incorporate the thing transferred as a material or a	1616
part into tangible personal property to be produced for sale by	1617
manufacturing, assembling, processing, or refining; or to use or	1618
consume the thing transferred directly in producing tangible	1619
personal property for sale by mining, including, without	1620
limitation, the extraction from the earth of all substances that	1621
are classed geologically as minerals, or directly in the rendition	1622
of a public utility service, except that the sales tax levied by	1623
this section shall be collected upon all meals, drinks, and food	1624
for human consumption sold when transporting persons. This	1625
paragraph does not exempt from "retail sale" or "sales at retail"	1626
the sale of tangible personal property that is to be incorporated	1627
into a structure or improvement to real property.	1628
(b) To hold the thing transferred as security for the	1629
performance of an obligation of the vendor;	1630
(c) To resell, hold, use, or consume the thing transferred as	1631
evidence of a contract of insurance;	1632
(d) To use or consume the thing directly in commercial	1633
fishing;	1634
(e) To incorporate the thing transferred as a material or a	1635
part into, or to use or consume the thing transferred directly in	1636
the production of, magazines distributed as controlled circulation	1637
publications;	1638

(f) To use or consume the thing transferred in the production 1639  
 and preparation in suitable condition for market and sale of 1640  
 printed, imprinted, overprinted, lithographic, multilithic, 1641  
 blueprinted, photostatic, or other productions or reproductions of 1642  
 written or graphic matter; 1643

(g) To use the thing transferred, as described in section 1644  
 5739.011 of the Revised Code, primarily in a manufacturing 1645  
 operation to produce tangible personal property for sale; 1646

(h) To use the benefit of a warranty, maintenance or service 1647  
 contract, or similar agreement, as described in division (B)(7) of 1648  
 section 5739.01 of the Revised Code, to repair or maintain 1649  
 tangible personal property, if all of the property that is the 1650  
 subject of the warranty, contract, or agreement would not be 1651  
 subject to the tax imposed by this section; 1652

(i) To use the thing transferred as qualified research and 1653  
 development equipment; 1654

(j) To use or consume the thing transferred primarily in 1655  
 storing, transporting, mailing, or otherwise handling purchased 1656  
 sales inventory in a warehouse, distribution center, or similar 1657  
 facility when the inventory is primarily distributed outside this 1658  
 state to retail stores of the person who owns or controls the 1659  
 warehouse, distribution center, or similar facility, to retail 1660  
 stores of an affiliated group of which that person is a member, or 1661  
 by means of direct marketing. This division does not apply to 1662  
 motor vehicles registered for operation on the public highways. As 1663  
 used in this division, "affiliated group" has the same meaning as 1664  
 in division (B)(3)(e) of section 5739.01 of the Revised Code and 1665  
 "direct marketing" has the same meaning as in division (B)(35) of 1666  
 this section. 1667

(k) To use or consume the thing transferred to fulfill a 1668

contractual obligation incurred by a warrantor pursuant to a 1669  
warranty provided as a part of the price of the tangible personal 1670  
property sold or by a vendor of a warranty, maintenance or service 1671  
contract, or similar agreement the provision of which is defined 1672  
as a sale under division (B)(7) of section 5739.01 of the Revised 1673  
Code; 1674

(l) To use or consume the thing transferred in the production 1675  
of a newspaper for distribution to the public; 1676

(m) To use tangible personal property to perform a service 1677  
listed in division (B)(3) of section 5739.01 of the Revised Code, 1678  
if the property is or is to be permanently transferred to the 1679  
consumer of the service as an integral part of the performance of 1680  
the service; 1681

(n) To use or consume the thing transferred primarily in 1682  
producing tangible personal property for sale by farming, 1683  
agriculture, horticulture, or floriculture. Persons engaged in 1684  
rendering farming, agriculture, horticulture, or floriculture 1685  
services for others are deemed engaged primarily in farming, 1686  
agriculture, horticulture, or floriculture. This paragraph does 1687  
not exempt from "retail sale" or "sales at retail" the sale of 1688  
tangible personal property that is to be incorporated into a 1689  
structure or improvement to real property. 1690

(o) To use or consume the thing transferred in acquiring, 1691  
formatting, editing, storing, and disseminating data or 1692  
information by electronic publishing; 1693

(p) To provide the thing transferred to the owner or lessee 1694  
of a motor vehicle that is being repaired or serviced, if the 1695  
thing transferred is a rented motor vehicle and the purchaser is 1696  
reimbursed for the cost of the rented motor vehicle by a 1697  
manufacturer, warrantor, or provider of a maintenance, service, or 1698

other similar contract or agreement, with respect to the motor	1699
vehicle that is being repaired or serviced;	1700
(q) To use or consume the thing transferred directly in	1701
production of crude oil and natural gas for sale. Persons engaged	1702
in rendering production services for others are deemed engaged in	1703
production.	1704
As used in division (B)(42)(q) of this section, "production"	1705
means operations and tangible personal property directly used to	1706
expose and evaluate an underground reservoir that may contain	1707
hydrocarbon resources, prepare the wellbore for production, and	1708
lift and control all substances yielded by the reservoir to the	1709
surface of the earth.	1710
(i) For the purposes of division (B)(42)(q) of this section,	1711
the "thing transferred" includes, but is not limited to, any of	1712
the following:	1713
(I) Services provided in the construction of permanent access	1714
roads, services provided in the construction of the well site, and	1715
services provided in the construction of temporary impoundments;	1716
(II) Equipment and rigging used for the specific purpose of	1717
creating with integrity a wellbore pathway to underground	1718
reservoirs;	1719
(III) Drilling and workover services used to work within a	1720
subsurface wellbore, and tangible personal property directly used	1721
in providing such services;	1722
(IV) Casing, tubulars, and float and centralizing equipment;	1723
(V) Trailers to which production equipment is attached;	1724
(VI) Well completion services, including cementing of casing,	1725
and tangible personal property directly used in providing such	1726

services;	1727
(VII) Wireline evaluation, mud logging, and perforation	1728
services, and tangible personal property directly used in	1729
providing such services;	1730
(VIII) Reservoir stimulation, hydraulic fracturing, and	1731
acidizing services, and tangible personal property directly used	1732
in providing such services, including all material pumped	1733
downhole;	1734
(IX) Pressure pumping equipment;	1735
(X) Artificial lift systems equipment;	1736
(XI) Wellhead equipment and well site equipment used to	1737
separate, stabilize, and control hydrocarbon phases and produced	1738
water;	1739
(XII) Tangible personal property directly used to control	1740
production equipment.	1741
(ii) For the purposes of division (B)(42)(q) of this section,	1742
the "thing transferred" does not include any of the following:	1743
(I) Tangible personal property used primarily in the	1744
exploration and production of any mineral resource regulated under	1745
Chapter 1509. of the Revised Code other than oil or gas;	1746
(II) Tangible personal property used primarily in storing,	1747
holding, or delivering solutions or chemicals used in well	1748
stimulation as defined in section 1509.01 of the Revised Code;	1749
(III) Tangible personal property used primarily in preparing,	1750
installing, or reclaiming foundations for drilling or pumping	1751
equipment or well stimulation material tanks;	1752
(IV) Tangible personal property used primarily in	1753
transporting, delivering, or removing equipment to or from the	1754

well site or storing such equipment before its use at the well site;	1755 1756
(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;	1757 1758 1759 1760
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	1761 1762
(VII) Well site fencing, lighting, or security systems;	1763
(VIII) Communication devices or services;	1764
(IX) Office supplies;	1765
(X) Trailers used as offices or lodging;	1766
(XI) Motor vehicles of any kind;	1767
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	1768 1769
(XIII) Tangible personal property used primarily as a safety device;	1770 1771
(XIV) Data collection or monitoring devices;	1772
(XV) Access ladders, stairs, or platforms attached to storage tanks.	1773 1774
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.	1775 1776 1777 1778 1779
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the	1780 1781

commissioner deems necessary to administer division (B)(42)(q) of 1782  
 this section. 1783

As used in division (B)(42) of this section, "thing" includes 1784  
 all transactions included in divisions (B)(3)(a), (b), and (e) of 1785  
 section 5739.01 of the Revised Code. 1786

(43) Sales conducted through a coin operated device that 1787  
 activates vacuum equipment or equipment that dispenses water, 1788  
 whether or not in combination with soap or other cleaning agents 1789  
 or wax, to the consumer for the consumer's use on the premises in 1790  
 washing, cleaning, or waxing a motor vehicle, provided no other 1791  
 personal property or personal service is provided as part of the 1792  
 transaction. 1793

(44) Sales of replacement and modification parts for engines, 1794  
 airframes, instruments, and interiors in, and paint for, aircraft 1795  
 used primarily in a fractional aircraft ownership program, and 1796  
 sales of services for the repair, modification, and maintenance of 1797  
 such aircraft, and machinery, equipment, and supplies primarily 1798  
 used to provide those services. 1799

(45) Sales of telecommunications service that is used 1800  
 directly and primarily to perform the functions of a call center. 1801  
 As used in this division, "call center" means any physical 1802  
 location where telephone calls are placed or received in high 1803  
 volume for the purpose of making sales, marketing, customer 1804  
 service, technical support, or other specialized business 1805  
 activity, and that employs at least fifty individuals that engage 1806  
 in call center activities on a full-time basis, or sufficient 1807  
 individuals to fill fifty full-time equivalent positions. 1808

(46) Sales by a telecommunications service vendor of 900 1809  
 service to a subscriber. This division does not apply to 1810  
 information services, as defined in division (FF) of section 1811

5739.01 of the Revised Code.	1812
(47) Sales of value-added non-voice data service. This	1813
division does not apply to any similar service that is not	1814
otherwise a telecommunications service.	1815
(48)(a) Sales of machinery, equipment, and software to a	1816
qualified direct selling entity for use in a warehouse or	1817
distribution center primarily for storing, transporting, or	1818
otherwise handling inventory that is held for sale to independent	1819
salespersons who operate as direct sellers and that is held	1820
primarily for distribution outside this state;	1821
(b) As used in division (B)(48)(a) of this section:	1822
(i) "Direct seller" means a person selling consumer products	1823
to individuals for personal or household use and not from a fixed	1824
retail location, including selling such product at in-home product	1825
demonstrations, parties, and other one-on-one selling.	1826
(ii) "Qualified direct selling entity" means an entity	1827
selling to direct sellers at the time the entity enters into a tax	1828
credit agreement with the tax credit authority pursuant to section	1829
122.17 of the Revised Code, provided that the agreement was	1830
entered into on or after January 1, 2007. Neither contingencies	1831
relevant to the granting of, nor later developments with respect	1832
to, the tax credit shall impair the status of the qualified direct	1833
selling entity under division (B)(48) of this section after	1834
execution of the tax credit agreement by the tax credit authority.	1835
(c) Division (B)(48) of this section is limited to machinery,	1836
equipment, and software first stored, used, or consumed in this	1837
state within the period commencing June 24, 2008, and ending on	1838
the date that is five years after that date.	1839
(49) Sales of materials, parts, equipment, or engines used in	1840

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.

(50) Sales of full flight simulators that are used for pilot  
 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 1871  
 team for a significant portion of the team's home schedule, 1872  
 provided the following apply: 1873

(I) The facility is leased from the eligible county pursuant 1874  
 to a lease that requires substantially all of the revenue from the 1875  
 operation of the business or activity conducted by the nonprofit 1876  
 corporation at the facility in excess of operating costs, capital 1877  
 expenditures, and reserves to be paid to the eligible county at 1878  
 least once per calendar year. 1879

(II) Upon dissolution and liquidation of the nonprofit 1880  
 corporation, all of its net assets are distributable to the board 1881  
 of commissioners of the eligible county from which the corporation 1882  
 leases the facility. 1883

(ii) "Eligible county" has the same meaning as in section 1884  
 307.695 of the Revised Code. 1885

(53) Sales to or by a cable service provider, video service 1886  
 provider, or radio or television broadcast station regulated by 1887  
 the federal government of cable service or programming, video 1888  
 service or programming, audio service or programming, or 1889  
 electronically transferred digital audiovisual or audio work. As 1890  
 used in division (B)(53) of this section, "cable service" and 1891  
 "cable service provider" have the same meanings as in section 1892  
 1332.01 of the Revised Code, and "video service," "video service 1893  
 provider," and "video programming" have the same meanings as in 1894  
 section 1332.21 of the Revised Code. 1895

(54) Sales of a digital audio work electronically transferred 1896  
 for delivery through use of a machine, such as a juke box, that 1897  
 does all of the following: 1898

(a) Accepts direct payments to operate; 1899

(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B)(54)(a) of this section;	1900 1901 1902
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	1903 1904
(55)(a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:	1905 1906 1907
(i) An item of clothing, the price of which is seventy-five dollars or less;	1908 1909
(ii) An item of school supplies, the price of which is twenty dollars or less;	1910 1911
(iii) An item of school instructional material, the price of which is twenty dollars or less.	1912 1913
(b) As used in division (B)(55) of this section:	1914
(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	1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928

recreational equipment; belt buckles sold separately; costume 1929  
 masks sold separately; patches and emblems sold separately; sewing 1930  
 equipment and supplies including, but not limited to, knitting 1931  
 needles, patterns, pins, scissors, sewing machines, sewing 1932  
 needles, tape measures, and thimbles; and sewing materials that 1933  
 become part of "clothing" including, but not limited to, buttons, 1934  
 fabric, lace, thread, yarn, and zippers. 1935

(ii) "School supplies" means items commonly used by a student 1936  
 in a course of study. "School supplies" includes only the 1937  
 following items: binders; book bags; calculators; cellophane tape; 1938  
 blackboard chalk; compasses; composition books; crayons; erasers; 1939  
 folders, expandable, pocket, plastic, and manila; glue, paste, and 1940  
 paste sticks; highlighters; index cards; index card boxes; legal 1941  
 pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled 1942  
 notebook paper, copy paper, graph paper, tracing paper, manila 1943  
 paper, colored paper, poster board, and construction paper; pencil 1944  
 boxes and other school supply boxes; pencil sharpeners; pencils; 1945  
 pens; protractors; rulers; scissors; and writing tablets. "School 1946  
 supplies" does not include any item purchased for use in a trade 1947  
 or business. 1948

(iii) "School instructional material" means written material 1949  
 commonly used by a student in a course of study as a reference and 1950  
 to learn the subject being taught. "School instructional material" 1951  
 includes only the following items: reference books, reference maps 1952  
 and globes, textbooks, and workbooks. "School instructional 1953  
 material" does not include any material purchased for use in a 1954  
 trade or business. 1955

(56) Sales of feminine hygiene products. 1956

(C) For the purpose of the proper administration of this 1957  
 chapter, and to prevent the evasion of the tax, it is presumed 1958

that all sales made in this state are subject to the tax until the  
contrary is established.

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

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

**Sec. 5739.03.** (A) Except as provided in section 5739.05 or  
section 5739.051 of the Revised Code, the tax imposed by or  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of  
the Revised Code shall be paid by the consumer to the vendor, and  
each vendor shall collect from the consumer, as a trustee for the  
state of Ohio, the full and exact amount of the tax payable on  
each taxable sale, in the manner and at the times provided as  
follows:

(1) If the price is, at or prior to the provision of the  
service or the delivery of possession of the thing sold to the  
consumer, paid in currency passed from hand to hand by the

consumer or the consumer's agent to the vendor or the vendor's agent, the vendor or the vendor's agent shall collect the tax with and at the same time as the price;

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B)(1)(a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B)(1) to (11), (28), ~~or (55)~~, or (56) of section 5739.02 of the Revised Code, or if the consumer claims the transaction is not a taxable sale due to one or more of the exclusions provided under divisions (JJ)(1) to (5) of section 5739.01 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly

claimed, the consumer shall be liable for any tax due on that sale 2018  
 under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 2019  
 5741. of the Revised Code. Relief under this division from 2020  
 liability does not apply to any of the following: 2021

(i) A vendor that fraudulently fails to collect tax; 2022

(ii) A vendor that solicits consumers to participate in the 2023  
 unlawful claim of an exemption; 2024

(iii) A vendor that accepts an exemption certificate from a 2025  
 consumer that claims an exemption based on who purchases or who 2026  
 sells property or a service, when the subject of the transaction 2027  
 sought to be covered by the exemption certificate is actually 2028  
 received by the consumer at a location operated by the vendor in 2029  
 this state, and this state has posted to its web site an exemption 2030  
 certificate form that clearly and affirmatively indicates that the 2031  
 claimed exemption is not available in this state; 2032

(iv) A vendor that accepts an exemption certificate from a 2033  
 consumer who claims a multiple points of use exemption under 2034  
 division (D) of section 5739.033 of the Revised Code, if the item 2035  
 purchased is tangible personal property, other than prewritten 2036  
 computer software. 2037

(2) The vendor shall maintain records, including exemption 2038  
 certificates, of all sales on which a consumer has claimed an 2039  
 exemption, and provide them to the tax commissioner on request. 2040

(3) The tax commissioner may establish an identification 2041  
 system whereby the commissioner issues an identification number to 2042  
 a consumer that is exempt from payment of the tax. The consumer 2043  
 must present the number to the vendor, if any sale is claimed to 2044  
 be exempt as provided in this section. 2045

(4) If no certificate is provided or obtained within ninety 2046

days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate.

(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce.

(6) If a transaction is claimed to be exempt under division (B)(13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification shall be in such form as the tax commissioner prescribes.

(C) As used in this division, "contractee" means a person who seeks to enter or enters into a contract or agreement with a contractor or vendor for the construction of real property or for the sale and installation onto real property of tangible personal property.

Any contractor or vendor may request from any contractee a

certification of what portion of the property to be transferred 2077  
under such contract or agreement is to be incorporated into the 2078  
realty and what portion will retain its status as tangible 2079  
personal property after installation is completed. The contractor 2080  
or vendor shall request the certification by certified mail 2081  
delivered to the contractee, return receipt requested. Upon 2082  
receipt of such request and prior to entering into the contract or 2083  
agreement, the contractee shall provide to the contractor or 2084  
vendor a certification sufficiently detailed to enable the 2085  
contractor or vendor to ascertain the resulting classification of 2086  
all materials purchased or fabricated by the contractor or vendor 2087  
and transferred to the contractee. This requirement applies to a 2088  
contractee regardless of whether the contractee holds a direct 2089  
payment permit under section 5739.031 of the Revised Code or 2090  
provides to the contractor or vendor an exemption certificate as 2091  
provided under this section. 2092

For the purposes of the taxes levied by this chapter and 2093  
Chapter 5741. of the Revised Code, the contractor or vendor may in 2094  
good faith rely on the contractee's certification. Notwithstanding 2095  
division (B) of section 5739.01 of the Revised Code, if the tax 2096  
commissioner determines that certain property certified by the 2097  
contractee as tangible personal property pursuant to this division 2098  
is, in fact, real property, the contractee shall be considered to 2099  
be the consumer of all materials so incorporated into that real 2100  
property and shall be liable for the applicable tax, and the 2101  
contractor or vendor shall be excused from any liability on those 2102  
materials. 2103

If a contractee fails to provide such certification upon the 2104  
request of the contractor or vendor, the contractor or vendor 2105  
shall comply with the provisions of this chapter and Chapter 5741. 2106  
of the Revised Code without the certification. If the tax 2107

commissioner determines that such compliance has been performed in 2108  
 good faith and that certain property treated as tangible personal 2109  
 property by the contractor or vendor is, in fact, real property, 2110  
 the contractee shall be considered to be the consumer of all 2111  
 materials so incorporated into that real property and shall be 2112  
 liable for the applicable tax, and the construction contractor or 2113  
 vendor shall be excused from any liability on those materials. 2114

This division does not apply to any contract or agreement 2115  
 where the tax commissioner determines as a fact that a 2116  
 certification under this division was made solely on the decision 2117  
 or advice of the contractor or vendor. 2118

(D) Notwithstanding division (B) of section 5739.01 of the 2119  
 Revised Code, whenever the total rate of tax imposed under this 2120  
 chapter is increased after the date after a construction contract 2121  
 is entered into, the contractee shall reimburse the construction 2122  
 contractor for any additional tax paid on tangible property 2123  
 consumed or services received pursuant to the contract. 2124

(E) A vendor who files a petition for reassessment contesting 2125  
 the assessment of tax on sales for which the vendor obtained no 2126  
 valid exemption certificates and for which the vendor failed to 2127  
 establish that the sales were properly not subject to the tax 2128  
 during the one-hundred-twenty-day period allowed under division 2129  
 (B) of this section, may present to the tax commissioner 2130  
 additional evidence to prove that the sales were properly subject 2131  
 to a claim of exception or exemption. The vendor shall file such 2132  
 evidence within ninety days of the receipt by the vendor of the 2133  
 notice of assessment, except that, upon application and for 2134  
 reasonable cause, the period for submitting such evidence shall be 2135  
 extended thirty days. 2136

The commissioner shall consider such additional evidence in 2137

reaching the final determination on the assessment and petition	2138
for reassessment.	2139
(F) Whenever a vendor refunds the price, minus any separately	2140
stated delivery charge, of an item of tangible personal property	2141
on which the tax imposed under this chapter has been paid, the	2142
vendor shall also refund the amount of tax paid, minus the amount	2143
of tax attributable to the delivery charge."	2144
In line 1084, delete "section" and insert "sections 5739.01,	2145
5739.012, 5739.02, 5739.03, and"	2146
In line 1085, delete "is" and insert "are"	2147
After line 1088, insert:	2148
"The amendment by this act of sections 5739.01, 5739.012,	2149
5739.02, and 5739.03 of the Revised Code applies on and after the	2150
first day of the first month that begins at least thirty days	2151
after the effective date of this act."	2152

The motion was \_\_\_\_\_ agreed to.