

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 134**

**Representatives Antani, Weinstein**

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**A BILL**

To amend sections 5739.02 and 5739.05 of the 1  
Revised Code to provide a three-day sales tax 2  
"holiday" each March during which sales of 3  
qualifying Energy Star products are exempt from 4  
sales and use taxes. 5

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

**Section 1.** That sections 5739.02 and 5739.05 of the 6  
Revised Code be amended to read as follows: 7

**Sec. 5739.02.** For the purpose of providing revenue with 8  
which to meet the needs of the state, for the use of the general 9  
revenue fund of the state, for the purpose of securing a 10  
thorough and efficient system of common schools throughout the 11  
state, for the purpose of affording revenues, in addition to 12  
those from general property taxes, permitted under 13  
constitutional limitations, and from other sources, for the 14  
support of local governmental functions, and for the purpose of 15  
reimbursing the state for the expense of administering this 16  
chapter, an excise tax is hereby levied on each retail sale made 17  
in this state. 18

(A) (1) The tax shall be collected as provided in section 19

5739.025 of the Revised Code. The rate of the tax shall be five 20  
and three-fourths per cent. The tax applies and is collectible 21  
when the sale is made, regardless of the time when the price is 22  
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24  
of more than thirty days or an indefinite term with a minimum 25  
period of more than thirty days, of any motor vehicles designed 26  
by the manufacturer to carry a load of not more than one ton, 27  
watercraft, outboard motor, or aircraft, or of any tangible 28  
personal property, other than motor vehicles designed by the 29  
manufacturer to carry a load of more than one ton, to be used by 30  
the lessee or renter primarily for business purposes, the tax 31  
shall be collected by the vendor at the time the lease or rental 32  
is consummated and shall be calculated by the vendor on the 33  
basis of the total amount to be paid by the lessee or renter 34  
under the lease agreement. If the total amount of the 35  
consideration for the lease or rental includes amounts that are 36  
not calculated at the time the lease or rental is executed, the 37  
tax shall be calculated and collected by the vendor at the time 38  
such amounts are billed to the lessee or renter. In the case of 39  
an open-end lease or rental, the tax shall be calculated by the 40  
vendor on the basis of the total amount to be paid during the 41  
initial fixed term of the lease or rental, and for each 42  
subsequent renewal period as it comes due. As used in this 43  
division, "motor vehicle" has the same meaning as in section 44  
4501.01 of the Revised Code, and "watercraft" includes an 45  
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or 47  
similar provision that applies if the renewal clause is not 48  
exercised is presumed to be a sham transaction. In such a case, 49  
the tax shall be calculated and paid on the basis of the entire 50

length of the lease period, including any renewal periods, until 51  
the termination penalty or similar provision no longer applies. 52  
The taxpayer shall bear the burden, by a preponderance of the 53  
evidence, that the transaction or series of transactions is not 54  
a sham transaction. 55

(3) Except as provided in division (A)(2) of this section, 56  
in the case of a sale, the price of which consists in whole or 57  
in part of the lease or rental of tangible personal property, 58  
the tax shall be measured by the installments of that lease or 59  
rental. 60

(4) In the case of a sale of a physical fitness facility 61  
service or recreation and sports club service, the price of 62  
which consists in whole or in part of a membership for the 63  
receipt of the benefit of the service, the tax applicable to the 64  
sale shall be measured by the installments thereof. 65

(B) The tax does not apply to the following: 66

(1) Sales to the state or any of its political 67  
subdivisions, or to any other state or its political 68  
subdivisions if the laws of that state exempt from taxation 69  
sales made to this state and its political subdivisions; 70

(2) Sales of food for human consumption off the premises 71  
where sold; 72

(3) Sales of food sold to students only in a cafeteria, 73  
dormitory, fraternity, or sorority maintained in a private, 74  
public, or parochial school, college, or university; 75

(4) Sales of newspapers and sales or transfers of 76  
magazines distributed as controlled circulation publications; 77

(5) The furnishing, preparing, or serving of meals without 78

charge by an employer to an employee provided the employer 79  
records the meals as part compensation for services performed or 80  
work done; 81

(6) Sales of motor fuel upon receipt, use, distribution, 82  
or sale of which in this state a tax is imposed by the law of 83  
this state, but this exemption shall not apply to the sale of 84  
motor fuel on which a refund of the tax is allowable under 85  
division (A) of section 5735.14 of the Revised Code; and the tax 86  
commissioner may deduct the amount of tax levied by this section 87  
applicable to the price of motor fuel when granting a refund of 88  
motor fuel tax pursuant to division (A) of section 5735.14 of 89  
the Revised Code and shall cause the amount deducted to be paid 90  
into the general revenue fund of this state; 91

(7) Sales of natural gas by a natural gas company or 92  
municipal gas utility, of water by a water-works company, or of 93  
steam by a heating company, if in each case the thing sold is 94  
delivered to consumers through pipes or conduits, and all sales 95  
of communications services by a telegraph company, all terms as 96  
defined in section 5727.01 of the Revised Code, and sales of 97  
electricity delivered through wires; 98

(8) Casual sales by a person, or auctioneer employed 99  
directly by the person to conduct such sales, except as to such 100  
sales of motor vehicles, watercraft or outboard motors required 101  
to be titled under section 1548.06 of the Revised Code, 102  
watercraft documented with the United States coast guard, 103  
snowmobiles, and all-purpose vehicles as defined in section 104  
4519.01 of the Revised Code; 105

(9) (a) Sales of services or tangible personal property, 106  
other than motor vehicles, mobile homes, and manufactured homes, 107  
by churches, organizations exempt from taxation under section 108

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

(b) The limitation on the number of days on which tax- 122  
exempt sales may be made by a church or organization under 123  
division (B) (9) (a) of this section does not apply to sales made 124  
by student clubs and other groups of students of a primary or 125  
secondary school, or a parent-teacher association, booster 126  
group, or similar organization that raises money to support or 127  
fund curricular or extracurricular activities of a primary or 128  
secondary school. 129

(c) Divisions (B) (9) (a) and (b) of this section do not 130  
apply to sales by a noncommercial educational radio or 131  
television broadcasting station. 132

(10) Sales not within the taxing power of this state under 133  
the Constitution or laws of the United States or the 134  
Constitution of this state; 135

(11) Except for transactions that are sales under division 136  
(B) (3) (r) of section 5739.01 of the Revised Code, the 137  
transportation of persons or property, unless the transportation 138

is by a private investigation and security service; 139

(12) Sales of tangible personal property or services to 140  
churches, to organizations exempt from taxation under section 141  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 142  
nonprofit organizations operated exclusively for charitable 143  
purposes in this state, no part of the net income of which 144  
inures to the benefit of any private shareholder or individual, 145  
and no substantial part of the activities of which consists of 146  
carrying on propaganda or otherwise attempting to influence 147  
legislation; sales to offices administering one or more homes 148  
for the aged or one or more hospital facilities exempt under 149  
section 140.08 of the Revised Code; and sales to organizations 150  
described in division (D) of section 5709.12 of the Revised 151  
Code. 152

"Charitable purposes" means the relief of poverty; the 153  
improvement of health through the alleviation of illness, 154  
disease, or injury; the operation of an organization exclusively 155  
for the provision of professional, laundry, printing, and 156  
purchasing services to hospitals or charitable institutions; the 157  
operation of a home for the aged, as defined in section 5701.13 158  
of the Revised Code; the operation of a radio or television 159  
broadcasting station that is licensed by the federal 160  
communications commission as a noncommercial educational radio 161  
or television station; the operation of a nonprofit animal 162  
adoption service or a county humane society; the promotion of 163  
education by an institution of learning that maintains a faculty 164  
of qualified instructors, teaches regular continuous courses of 165  
study, and confers a recognized diploma upon completion of a 166  
specific curriculum; the operation of a parent-teacher 167  
association, booster group, or similar organization primarily 168  
engaged in the promotion and support of the curricular or 169

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

Nothing in this division shall be deemed to exempt sales 179  
to any organization for use in the operation or carrying on of a 180  
trade or business, or sales to a home for the aged for use in 181  
the operation of independent living facilities as defined in 182  
division (A) of section 5709.12 of the Revised Code. 183

(13) Building and construction materials and services sold 184  
to construction contractors for incorporation into a structure 185  
or improvement to real property under a construction contract 186  
with this state or a political subdivision of this state, or 187  
with the United States government or any of its agencies; 188  
building and construction materials and services sold to 189  
construction contractors for incorporation into a structure or 190  
improvement to real property that are accepted for ownership by 191  
this state or any of its political subdivisions, or by the 192  
United States government or any of its agencies at the time of 193  
completion of the structures or improvements; building and 194  
construction materials sold to construction contractors for 195  
incorporation into a horticulture structure or livestock 196  
structure for a person engaged in the business of horticulture 197  
or producing livestock; building materials and services sold to 198  
a construction contractor for incorporation into a house of 199  
public worship or religious education, or a building used 200

exclusively for charitable purposes under a construction	201
contract with an organization whose purpose is as described in	202
division (B) (12) of this section; building materials and	203
services sold to a construction contractor for incorporation	204
into a building under a construction contract with an	205
organization exempt from taxation under section 501(c) (3) of the	206
Internal Revenue Code of 1986 when the building is to be used	207
exclusively for the organization's exempt purposes; building and	208
construction materials sold for incorporation into the original	209
construction of a sports facility under section 307.696 of the	210
Revised Code; building and construction materials and services	211
sold to a construction contractor for incorporation into real	212
property outside this state if such materials and services, when	213
sold to a construction contractor in the state in which the real	214
property is located for incorporation into real property in that	215
state, would be exempt from a tax on sales levied by that state;	216
building and construction materials for incorporation into a	217
transportation facility pursuant to a public-private agreement	218
entered into under sections 5501.70 to 5501.83 of the Revised	219
Code; and, until one calendar year after the construction of a	220
convention center that qualifies for property tax exemption	221
under section 5709.084 of the Revised Code is completed,	222
building and construction materials and services sold to a	223
construction contractor for incorporation into the real property	224
comprising that convention center;	225
(14) Sales of ships or vessels or rail rolling stock used	226
or to be used principally in interstate or foreign commerce, and	227
repairs, alterations, fuel, and lubricants for such ships or	228
vessels or rail rolling stock;	229
(15) Sales to persons primarily engaged in any of the	230
activities mentioned in division (B) (42) (a), (g), or (h) of this	231

section, to persons engaged in making retail sales, or to 232  
persons who purchase for sale from a manufacturer tangible 233  
personal property that was produced by the manufacturer in 234  
accordance with specific designs provided by the purchaser, of 235  
packages, including material, labels, and parts for packages, 236  
and of machinery, equipment, and material for use primarily in 237  
packaging tangible personal property produced for sale, 238  
including any machinery, equipment, and supplies used to make 239  
labels or packages, to prepare packages or products for 240  
labeling, or to label packages or products, by or on the order 241  
of the person doing the packaging, or sold at retail. "Packages" 242  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 243  
bindings, wrappings, and other similar devices and containers, 244  
but does not include motor vehicles or bulk tanks, trailers, or 245  
similar devices attached to motor vehicles. "Packaging" means 246  
placing in a package. Division (B) (15) of this section does not 247  
apply to persons engaged in highway transportation for hire. 248

(16) Sales of food to persons using supplemental nutrition 249  
assistance program benefits to purchase the food. As used in 250  
this division, "food" has the same meaning as in 7 U.S.C. 2012 251  
and federal regulations adopted pursuant to the Food and 252  
Nutrition Act of 2008. 253

(17) Sales to persons engaged in farming, agriculture, 254  
horticulture, or floriculture, of tangible personal property for 255  
use or consumption primarily in the production by farming, 256  
agriculture, horticulture, or floriculture of other tangible 257  
personal property for use or consumption primarily in the 258  
production of tangible personal property for sale by farming, 259  
agriculture, horticulture, or floriculture; or material and 260  
parts for incorporation into any such tangible personal property 261  
for use or consumption in production; and of tangible personal 262

property for such use or consumption in the conditioning or 263  
holding of products produced by and for such use, consumption, 264  
or sale by persons engaged in farming, agriculture, 265  
horticulture, or floriculture, except where such property is 266  
incorporated into real property; 267

(18) Sales of drugs for a human being that may be 268  
dispensed only pursuant to a prescription; insulin as recognized 269  
in the official United States pharmacopoeia; urine and blood 270  
testing materials when used by diabetics or persons with 271  
hypoglycemia to test for glucose or acetone; hypodermic syringes 272  
and needles when used by diabetics for insulin injections; 273  
epoetin alfa when purchased for use in the treatment of persons 274  
with medical disease; hospital beds when purchased by hospitals, 275  
nursing homes, or other medical facilities; and medical oxygen 276  
and medical oxygen-dispensing equipment when purchased by 277  
hospitals, nursing homes, or other medical facilities; 278

(19) Sales of prosthetic devices, durable medical 279  
equipment for home use, or mobility enhancing equipment, when 280  
made pursuant to a prescription and when such devices or 281  
equipment are for use by a human being. 282

(20) Sales of emergency and fire protection vehicles and 283  
equipment to nonprofit organizations for use solely in providing 284  
fire protection and emergency services, including trauma care 285  
and emergency medical services, for political subdivisions of 286  
the state; 287

(21) Sales of tangible personal property manufactured in 288  
this state, if sold by the manufacturer in this state to a 289  
retailer for use in the retail business of the retailer outside 290  
of this state and if possession is taken from the manufacturer 291  
by the purchaser within this state for the sole purpose of 292

immediately removing the same from this state in a vehicle owned	293
by the purchaser;	294
(22) Sales of services provided by the state or any of its	295
political subdivisions, agencies, instrumentalities,	296
institutions, or authorities, or by governmental entities of the	297
state or any of its political subdivisions, agencies,	298
instrumentalities, institutions, or authorities;	299
(23) Sales of motor vehicles to nonresidents of this state	300
under the circumstances described in division (B) of section	301
5739.029 of the Revised Code;	302
(24) Sales to persons engaged in the preparation of eggs	303
for sale of tangible personal property used or consumed directly	304
in such preparation, including such tangible personal property	305
used for cleaning, sanitizing, preserving, grading, sorting, and	306
classifying by size; packages, including material and parts for	307
packages, and machinery, equipment, and material for use in	308
packaging eggs for sale; and handling and transportation	309
equipment and parts therefor, except motor vehicles licensed to	310
operate on public highways, used in intraplant or interplant	311
transfers or shipment of eggs in the process of preparation for	312
sale, when the plant or plants within or between which such	313
transfers or shipments occur are operated by the same person.	314
"Packages" includes containers, cases, baskets, flats, fillers,	315
filler flats, cartons, closure materials, labels, and labeling	316
materials, and "packaging" means placing therein.	317
(25) (a) Sales of water to a consumer for residential use;	318
(b) Sales of water by a nonprofit corporation engaged	319
exclusively in the treatment, distribution, and sale of water to	320
consumers, if such water is delivered to consumers through pipes	321

or tubing.	322
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	323 324
(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:	325 326 327 328
(a) To prepare food for human consumption for sale;	329
(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;	330 331 332 333
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	334 335
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	336 337
(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;	338 339 340 341
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	342 343 344
(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;	345 346 347
(32) The sale, lease, repair, and maintenance of, parts	348

for, or items attached to or incorporated in, motor vehicles 349  
that are primarily used for transporting tangible personal 350  
property belonging to others by a person engaged in highway 351  
transportation for hire, except for packages and packaging used 352  
for the transportation of tangible personal property; 353

(33) Sales to the state headquarters of any veterans' 354  
organization in this state that is either incorporated and 355  
issued a charter by the congress of the United States or is 356  
recognized by the United States veterans administration, for use 357  
by the headquarters; 358

(34) Sales to a telecommunications service vendor, mobile 359  
telecommunications service vendor, or satellite broadcasting 360  
service vendor of tangible personal property and services used 361  
directly and primarily in transmitting, receiving, switching, or 362  
recording any interactive, one- or two-way electromagnetic 363  
communications, including voice, image, data, and information, 364  
through the use of any medium, including, but not limited to, 365  
poles, wires, cables, switching equipment, computers, and record 366  
storage devices and media, and component parts for the tangible 367  
personal property. The exemption provided in this division shall 368  
be in lieu of all other exemptions under division (B) (42) (a) or 369  
(n) of this section to which the vendor may otherwise be 370  
entitled, based upon the use of the thing purchased in providing 371  
the telecommunications, mobile telecommunications, or satellite 372  
broadcasting service. 373

(35) (a) Sales where the purpose of the consumer is to use 374  
or consume the things transferred in making retail sales and 375  
consisting of newspaper inserts, catalogues, coupons, flyers, 376  
gift certificates, or other advertising material that prices and 377  
describes tangible personal property offered for retail sale. 378

(b) Sales to direct marketing vendors of preliminary 379  
materials such as photographs, artwork, and typesetting that 380  
will be used in printing advertising material; and of printed 381  
matter that offers free merchandise or chances to win sweepstake 382  
prizes and that is mailed to potential customers with 383  
advertising material described in division (B) (35) (a) of this 384  
section; 385

(c) Sales of equipment such as telephones, computers, 386  
facsimile machines, and similar tangible personal property 387  
primarily used to accept orders for direct marketing retail 388  
sales. 389

(d) Sales of automatic food vending machines that preserve 390  
food with a shelf life of forty-five days or less by 391  
refrigeration and dispense it to the consumer. 392

For purposes of division (B) (35) of this section, "direct 393  
marketing" means the method of selling where consumers order 394  
tangible personal property by United States mail, delivery 395  
service, or telecommunication and the vendor delivers or ships 396  
the tangible personal property sold to the consumer from a 397  
warehouse, catalogue distribution center, or similar fulfillment 398  
facility by means of the United States mail, delivery service, 399  
or common carrier. 400

(36) Sales to a person engaged in the business of 401  
horticulture or producing livestock of materials to be 402  
incorporated into a horticulture structure or livestock 403  
structure; 404

(37) Sales of personal computers, computer monitors, 405  
computer keyboards, modems, and other peripheral computer 406  
equipment to an individual who is licensed or certified to teach 407

in an elementary or a secondary school in this state for use by 408  
that individual in preparation for teaching elementary or 409  
secondary school students; 410

(38) Sales to a professional racing team of any of the 411  
following: 412

(a) Motor racing vehicles; 413

(b) Repair services for motor racing vehicles; 414

(c) Items of property that are attached to or incorporated 415  
in motor racing vehicles, including engines, chassis, and all 416  
other components of the vehicles, and all spare, replacement, 417  
and rebuilt parts or components of the vehicles; except not 418  
including tires, consumable fluids, paint, and accessories 419  
consisting of instrumentation sensors and related items added to 420  
the vehicle to collect and transmit data by means of telemetry 421  
and other forms of communication. 422

(39) Sales of used manufactured homes and used mobile 423  
homes, as defined in section 5739.0210 of the Revised Code, made 424  
on or after January 1, 2000; 425

(40) Sales of tangible personal property and services to a 426  
provider of electricity used or consumed directly and primarily 427  
in generating, transmitting, or distributing electricity for use 428  
by others, including property that is or is to be incorporated 429  
into and will become a part of the consumer's production, 430  
transmission, or distribution system and that retains its 431  
classification as tangible personal property after 432  
incorporation; fuel or power used in the production, 433  
transmission, or distribution of electricity; energy conversion 434  
equipment as defined in section 5727.01 of the Revised Code; and 435  
tangible personal property and services used in the repair and 436

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

(41) Sales to a person providing services under division 445  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 446  
personal property and services used directly and primarily in 447  
providing taxable services under that section. 448

(42) Sales where the purpose of the purchaser is to do any 449  
of the following: 450

(a) To incorporate the thing transferred as a material or 451  
a part into tangible personal property to be produced for sale 452  
by manufacturing, assembling, processing, or refining; or to use 453  
or consume the thing transferred directly in producing tangible 454  
personal property for sale by mining, including, without 455  
limitation, the extraction from the earth of all substances that 456  
are classed geologically as minerals, or directly in the 457  
rendition of a public utility service, except that the sales tax 458  
levied by this section shall be collected upon all meals, 459  
drinks, and food for human consumption sold when transporting 460  
persons. This paragraph does not exempt from "retail sale" or 461  
"sales at retail" the sale of tangible personal property that is 462  
to be incorporated into a structure or improvement to real 463  
property. 464

(b) To hold the thing transferred as security for the 465  
performance of an obligation of the vendor; 466

(c) To resell, hold, use, or consume the thing transferred	467
as evidence of a contract of insurance;	468
(d) To use or consume the thing directly in commercial	469
fishing;	470
(e) To incorporate the thing transferred as a material or	471
a part into, or to use or consume the thing transferred directly	472
in the production of, magazines distributed as controlled	473
circulation publications;	474
(f) To use or consume the thing transferred in the	475
production and preparation in suitable condition for market and	476
sale of printed, imprinted, overprinted, lithographic,	477
multilithic, blueprinted, photostatic, or other productions or	478
reproductions of written or graphic matter;	479
(g) To use the thing transferred, as described in section	480
5739.011 of the Revised Code, primarily in a manufacturing	481
operation to produce tangible personal property for sale;	482
(h) To use the benefit of a warranty, maintenance or	483
service contract, or similar agreement, as described in division	484
(B) (7) of section 5739.01 of the Revised Code, to repair or	485
maintain tangible personal property, if all of the property that	486
is the subject of the warranty, contract, or agreement would not	487
be subject to the tax imposed by this section;	488
(i) To use the thing transferred as qualified research and	489
development equipment;	490
(j) To use or consume the thing transferred primarily in	491
storing, transporting, mailing, or otherwise handling purchased	492
sales inventory in a warehouse, distribution center, or similar	493
facility when the inventory is primarily distributed outside	494
this state to retail stores of the person who owns or controls	495

the warehouse, distribution center, or similar facility, to 496  
retail stores of an affiliated group of which that person is a 497  
member, or by means of direct marketing. This division does not 498  
apply to motor vehicles registered for operation on the public 499  
highways. As used in this division, "affiliated group" has the 500  
same meaning as in division (B) (3) (e) of section 5739.01 of the 501  
Revised Code and "direct marketing" has the same meaning as in 502  
division (B) (35) of this section. 503

(k) To use or consume the thing transferred to fulfill a 504  
contractual obligation incurred by a warrantor pursuant to a 505  
warranty provided as a part of the price of the tangible 506  
personal property sold or by a vendor of a warranty, maintenance 507  
or service contract, or similar agreement the provision of which 508  
is defined as a sale under division (B) (7) of section 5739.01 of 509  
the Revised Code; 510

(l) To use or consume the thing transferred in the 511  
production of a newspaper for distribution to the public; 512

(m) To use tangible personal property to perform a service 513  
listed in division (B) (3) of section 5739.01 of the Revised 514  
Code, if the property is or is to be permanently transferred to 515  
the consumer of the service as an integral part of the 516  
performance of the service; 517

(n) To use or consume the thing transferred primarily in 518  
producing tangible personal property for sale by farming, 519  
agriculture, horticulture, or floriculture. Persons engaged in 520  
rendering farming, agriculture, horticulture, or floriculture 521  
services for others are deemed engaged primarily in farming, 522  
agriculture, horticulture, or floriculture. This paragraph does 523  
not exempt from "retail sale" or "sales at retail" the sale of 524  
tangible personal property that is to be incorporated into a 525

structure or improvement to real property.	526
(o) To use or consume the thing transferred in acquiring,	527
formatting, editing, storing, and disseminating data or	528
information by electronic publishing;	529
(p) To provide the thing transferred to the owner or	530
lessee of a motor vehicle that is being repaired or serviced, if	531
the thing transferred is a rented motor vehicle and the	532
purchaser is reimbursed for the cost of the rented motor vehicle	533
by a manufacturer, warrantor, or provider of a maintenance,	534
service, or other similar contract or agreement, with respect to	535
the motor vehicle that is being repaired or serviced;	536
(q) To use or consume the thing transferred directly in	537
production of crude oil and natural gas for sale. Persons	538
engaged in rendering production services for others are deemed	539
engaged in production.	540
As used in division (B) (42) (q) of this section,	541
"production" means operations and tangible personal property	542
directly used to expose and evaluate an underground reservoir	543
that may contain hydrocarbon resources, prepare the wellbore for	544
production, and lift and control all substances yielded by the	545
reservoir to the surface of the earth.	546
(i) For the purposes of division (B) (42) (q) of this	547
section, the "thing transferred" includes, but is not limited	548
to, any of the following:	549
(I) Services provided in the construction of permanent	550
access roads, services provided in the construction of the well	551
site, and services provided in the construction of temporary	552
impoundments;	553
(II) Equipment and rigging used for the specific purpose	554

of creating with integrity a wellbore pathway to underground reservoirs;	555 556
(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;	557 558 559
(IV) Casing, tubulars, and float and centralizing equipment;	560 561
(V) Trailers to which production equipment is attached;	562
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	563 564 565
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	566 567 568
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	569 570 571 572
(IX) Pressure pumping equipment;	573
(X) Artificial lift systems equipment;	574
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control <del>hydrocarbon</del> <u>hydrocarbon</u> phases and produced water;	575 576 577
(XII) Tangible personal property directly used to control production equipment.	578 579
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the	580 581

following:	582
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	583 584 585
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	586 587 588
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	589 590 591
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	592 593 594 595
(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;	596 597 598 599
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	600 601
(VII) Well site fencing, lighting, or security systems;	602
(VIII) Communication devices or services;	603
(IX) Office supplies;	604
(X) Trailers used as offices or lodging;	605
(XI) Motor vehicles of any kind;	606
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	607 608

(XIII) Tangible personal property used primarily as a safety device; 609  
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(XIV) Data collection or monitoring devices; 611

(XV) Access ladders, stairs, or platforms attached to storage tanks. 612  
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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. 614  
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The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section. 619  
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As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code. 623  
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(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction. 626  
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(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and 633  
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supplies primarily used to provide those services. 638

(45) Sales of telecommunications service that is used 639  
directly and primarily to perform the functions of a call 640  
center. As used in this division, "call center" means any 641  
physical location where telephone calls are placed or received 642  
in high volume for the purpose of making sales, marketing, 643  
customer service, technical support, or other specialized 644  
business activity, and that employs at least fifty individuals 645  
that engage in call center activities on a full-time basis, or 646  
sufficient individuals to fill fifty full-time equivalent 647  
positions. 648

(46) Sales by a telecommunications service vendor of 900 649  
service to a subscriber. This division does not apply to 650  
information services, as defined in division (FF) of section 651  
5739.01 of the Revised Code. 652

(47) Sales of value-added non-voice data service. This 653  
division does not apply to any similar service that is not 654  
otherwise a telecommunications service. 655

(48) (a) Sales of machinery, equipment, and software to a 656  
qualified direct selling entity for use in a warehouse or 657  
distribution center primarily for storing, transporting, or 658  
otherwise handling inventory that is held for sale to 659  
independent salespersons who operate as direct sellers and that 660  
is held primarily for distribution outside this state; 661

(b) As used in division (B) (48) (a) of this section: 662

(i) "Direct seller" means a person selling consumer 663  
products to individuals for personal or household use and not 664  
from a fixed retail location, including selling such product at 665  
in-home product demonstrations, parties, and other one-on-one 666

selling. 667

(ii) "Qualified direct selling entity" means an entity 668  
selling to direct sellers at the time the entity enters into a 669  
tax credit agreement with the tax credit authority pursuant to 670  
section 122.17 of the Revised Code, provided that the agreement 671  
was entered into on or after January 1, 2007. Neither 672  
contingencies relevant to the granting of, nor later 673  
developments with respect to, the tax credit shall impair the 674  
status of the qualified direct selling entity under division (B) 675  
(48) of this section after execution of the tax credit agreement 676  
by the tax credit authority. 677

(c) Division (B) (48) of this section is limited to 678  
machinery, equipment, and software first stored, used, or 679  
consumed in this state within the period commencing June 24, 680  
2008, and ending on the date that is five years after that date. 681

(49) Sales of materials, parts, equipment, or engines used 682  
in the repair or maintenance of aircraft or avionics systems of 683  
such aircraft, and sales of repair, remodeling, replacement, or 684  
maintenance services in this state performed on aircraft or on 685  
an aircraft's avionics, engine, or component materials or parts. 686  
As used in division (B) (49) of this section, "aircraft" means 687  
aircraft of more than six thousand pounds maximum certified 688  
takeoff weight or used exclusively in general aviation. 689

(50) Sales of full flight simulators that are used for 690  
pilot or flight-crew training, sales of repair or replacement 691  
parts or components, and sales of repair or maintenance services 692  
for such full flight simulators. "Full flight simulator" means a 693  
replica of a specific type, or make, model, and series of 694  
aircraft cockpit. It includes the assemblage of equipment and 695  
computer programs necessary to represent aircraft operations in 696

ground and flight conditions, a visual system providing an out- 697  
of-the-cockpit view, and a system that provides cues at least 698  
equivalent to those of a three-degree-of-freedom motion system, 699  
and has the full range of capabilities of the systems installed 700  
in the device as described in appendices A and B of part 60 of 701  
chapter 1 of title 14 of the Code of Federal Regulations. 702

(51) Any transfer or lease of tangible personal property 703  
between the state and JobsOhio in accordance with section 704  
4313.02 of the Revised Code. 705

(52) (a) Sales to a qualifying corporation. 706

(b) As used in division (B) (52) of this section: 707

(i) "Qualifying corporation" means a nonprofit corporation 708  
organized in this state that leases from an eligible county 709  
land, buildings, structures, fixtures, and improvements to the 710  
land that are part of or used in a public recreational facility 711  
used by a major league professional athletic team or a class A 712  
to class AAA minor league affiliate of a major league 713  
professional athletic team for a significant portion of the 714  
team's home schedule, provided the following apply: 715

(I) The facility is leased from the eligible county 716  
pursuant to a lease that requires substantially all of the 717  
revenue from the operation of the business or activity conducted 718  
by the nonprofit corporation at the facility in excess of 719  
operating costs, capital expenditures, and reserves to be paid 720  
to the eligible county at least once per calendar year. 721

(II) Upon dissolution and liquidation of the nonprofit 722  
corporation, all of its net assets are distributable to the 723  
board of commissioners of the eligible county from which the 724  
corporation leases the facility. 725

(ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code.	726 727
(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work. As used in division (B) (53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video programming" have the same meanings as in section 1332.21 of the Revised Code.	728 729 730 731 732 733 734 735 736 737
(54) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any bullion described in section 408(m) (3) (B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee. "Investment coin" means any coin composed primarily of gold, silver, platinum, or palladium.	738 739 740 741 742 743
(55) Sales of a digital audio work electronically transferred for delivery through use of a machine, such as a juke box, that does all of the following:	744 745 746
(a) Accepts direct payments to operate;	747
(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section;	748 749 750
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	751 752
(56) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each	753 754

year, beginning in 2018:	755
(i) An item of clothing, the price of which is seventy-five dollars or less;	756 757
(ii) An item of school supplies, the price of which is twenty dollars or less;	758 759
(iii) An item of school instructional material, the price of which is twenty dollars or less.	760 761
(b) As used in division (B) (56) of this section:	762
(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and	763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783

zippers. 784

(ii) "School supplies" means items commonly used by a 785  
student in a course of study. "School supplies" includes only 786  
the following items: binders; book bags; calculators; cellophane 787  
tape; blackboard chalk; compasses; composition books; crayons; 788  
erasers; folders, expandable, pocket, plastic, and manila; glue, 789  
paste, and paste sticks; highlighters; index cards; index card 790  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 791  
loose-leaf ruled notebook paper, copy paper, graph paper, 792  
tracing paper, manila paper, colored paper, poster board, and 793  
construction paper; pencil boxes and other school supply boxes; 794  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 795  
and writing tablets. "School supplies" does not include any item 796  
purchased for use in a trade or business. 797

(iii) "School instructional material" means written 798  
material commonly used by a student in a course of study as a 799  
reference and to learn the subject being taught. "School 800  
instructional material" includes only the following items: 801  
reference books, reference maps and globes, textbooks, and 802  
workbooks. "School instructional material" does not include any 803  
material purchased for use in a trade or business. 804

(57) Sales of tangible personal property that is not 805  
required to be registered or licensed under the laws of this 806  
state to a citizen of a foreign nation that is not a citizen of 807  
the United States, provided the property is delivered to a 808  
person in this state that is not a related member of the 809  
purchaser, is physically present in this state for the sole 810  
purpose of temporary storage and package consolidation, and is 811  
subsequently delivered to the purchaser at a delivery address in 812  
a foreign nation. As used in division (B)(56) of this section, 813

"related member" has the same meaning as in section 5733.042 of the Revised Code, and "temporary storage" means the storage of tangible personal property for a period of not more than sixty days.

(58) Sales of qualifying energy star products occurring on the first Friday in March and the following Saturday and Sunday of each year.

As used in this division, "qualifying energy star product" means a device that carries the energy star label indicating that the device meets the energy efficiency criteria of the energy star program established by the United States department of energy and the United States environmental protection agency and that is categorized as an appliance or water heater or as heating and cooling equipment under that program. "Qualifying energy star product" does not include any device that is rented, purchased for use in a trade or business, or purchased by a person who will affix or install the device on behalf of the ultimate consumer. For the purposes of this division, a sale of a qualifying energy star product is considered to "occur" during the specified three-day period if, regardless of the date the device is delivered, the purchaser paid for the device during the specified period and did not request any delay in the shipment or delivery of the device.

(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed 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. 844

(E) The tax collected by the vendor from the consumer 845  
under this chapter is not part of the price, but is a tax 846  
collection for the benefit of the state, and of counties levying 847  
an additional sales tax pursuant to section 5739.021 or 5739.026 848  
of the Revised Code and of transit authorities levying an 849  
additional sales tax pursuant to section 5739.023 of the Revised 850  
Code. Except for the discount authorized under section 5739.12 851  
of the Revised Code and the effects of any rounding pursuant to 852  
section 5703.055 of the Revised Code, no person other than the 853  
state or such a county or transit authority shall derive any 854  
benefit from the collection or payment of the tax levied by this 855  
section or section 5739.021, 5739.023, or 5739.026 of the 856  
Revised Code. 857

**Sec. 5739.05.** (A) (1) The tax commissioner shall enforce 858  
and administer sections 5739.01 to 5739.31 of the Revised Code, 859  
which are hereby declared to be sections which the commissioner 860  
is required to administer within the meaning of sections 5703.17 861  
to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. 862  
The commissioner may adopt and promulgate, in accordance with 863  
sections 119.01 to 119.13 of the Revised Code, such rules as the 864  
commissioner deems necessary to administer sections 5739.01 to 865  
5739.31 of the Revised Code. 866

(2) (a) On or before the first day of May of each year, the 867  
commissioner shall make available to vendors a notice explaining 868  
the three-day exemption period required under division (B) (56) 869  
of section 5739.02 of the Revised Code. 870

(b) On or before the first day of December of each year, 871  
the commissioner shall make available to vendors a notice 872  
explaining the three-day exemption period required under 873

division (B) (58) of section 5739.02 of the Revised Code. 874

(B) Upon application, the commissioner may authorize a 875  
vendor to pay on a predetermined basis the tax levied by or 876  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 877  
the Revised Code upon sales of things produced or distributed or 878  
services provided by such vendor, and the commissioner may waive 879  
the collection of the tax from the consumer. The commissioner 880  
shall not grant such authority unless the commissioner finds 881  
that the granting of the authority would improve compliance and 882  
increase the efficiency of the administration of the tax. The 883  
person to whom such authority is granted shall post a notice, if 884  
required by the commissioner, at the location where the product 885  
is offered for sale that the tax is included in the selling 886  
price. The commissioner may adopt rules to administer this 887  
division. 888

(C) Upon application, the commissioner may authorize a 889  
vendor to remit, on the basis of a prearranged agreement under 890  
this division, the tax levied by section 5739.02 or pursuant to 891  
section 5739.021, 5739.023, or 5739.026 of the Revised Code. The 892  
proportions and ratios in a prearranged agreement shall be 893  
determined either by a test check conducted by the commissioner 894  
under terms and conditions agreed to by the commissioner and the 895  
vendor or by any other method agreed upon by the vendor and the 896  
commissioner. If the parties are unable to agree to the terms 897  
and conditions of the test check or other method, the 898  
application shall be denied. 899

If used, the test check shall determine the proportion 900  
that taxable retail sales bear to all of the vendor's retail 901  
sales and the ratio which the tax required to be collected under 902  
sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 903

Revised Code bears to the receipts from the vendor's taxable retail sales. 904  
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The vendor's liability for remitting the tax shall be based solely upon the proportions and ratios established in the agreement until such time that the vendor or the commissioner believes that the nature of the vendor's business has so changed as to make the agreement no longer representative. The commissioner may give notice to the vendor at any time that the authorization is revoked or the vendor may notify the commissioner that the vendor no longer elects to report under the authorization. Such notice shall be delivered to the other party personally or by registered mail. The revocation or cancellation is effective the last day of the month in which the vendor or the commissioner receives the notice. 906  
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**Section 2.** That existing sections 5739.02 and 5739.05 of the Revised Code are hereby repealed. 918  
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