

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**H. B. No. 390**

**Representatives Schaffer, Retherford**

**Cosponsor: Representative Amstutz**

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**A BILL**

To amend sections 5739.01 and 5739.02 of the 1  
Revised Code to exempt the sale of natural gas 2  
by a municipal gas company from the sales and 3  
use tax. 4

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

**Section 1.** That sections 5739.01 and 5739.02 of the 5  
Revised Code be amended to read as follows: 6

**Sec. 5739.01.** As used in this chapter: 7

(A) "Person" includes individuals, receivers, assignees, 8  
trustees in bankruptcy, estates, firms, partnerships, 9  
associations, joint-stock companies, joint ventures, clubs, 10  
societies, corporations, the state and its political 11  
subdivisions, and combinations of individuals of any form. 12

(B) "Sale" and "selling" include all of the following 13  
transactions for a consideration in any manner, whether 14  
absolutely or conditionally, whether for a price or rental, in 15  
money or by exchange, and by any means whatsoever: 16

(1) All transactions by which title or possession, or 17

both, of tangible personal property, is or is to be transferred, 18  
or a license to use or consume tangible personal property is or 19  
is to be granted; 20

(2) All transactions by which lodging by a hotel is or is 21  
to be furnished to transient guests; 22

(3) All transactions by which: 23

(a) An item of tangible personal property is or is to be 24  
repaired, except property, the purchase of which would not be 25  
subject to the tax imposed by section 5739.02 of the Revised 26  
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 30  
Code or property that is or is to be incorporated into and will 31  
become a part of a production, transmission, transportation, or 32  
distribution system for the delivery of a public utility 33  
service; 34

(c) The service of washing, cleaning, waxing, polishing, 35  
or painting a motor vehicle is or is to be furnished; 36

(d) Until August 1, 2003, industrial laundry cleaning 37  
services are or are to be provided and, on and after August 1, 38  
2003, laundry and dry cleaning services are or are to be 39  
provided; 40

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

data processing, computer services, or electronic information 47  
services are incidental or supplemental. Notwithstanding any 48  
other provision of this chapter, such transactions that occur 49  
between members of an affiliated group are not sales. An 50  
"affiliated group" means two or more persons related in such a 51  
way that one person owns or controls the business operation of 52  
another member of the group. In the case of corporations with 53  
stock, one corporation owns or controls another if it owns more 54  
than fifty per cent of the other corporation's common stock with 55  
voting rights. 56

(f) Telecommunications service, including prepaid calling 57  
service, prepaid wireless calling service, or ancillary service, 58  
is or is to be provided, but not including coin-operated 59  
telephone service; 60

(g) Landscaping and lawn care service is or is to be 61  
provided; 62

(h) Private investigation and security service is or is to 63  
be provided; 64

(i) Information services or tangible personal property is 65  
provided or ordered by means of a nine hundred telephone call; 66

(j) Building maintenance and janitorial service is or is 67  
to be provided; 68

(k) Employment service is or is to be provided; 69

(l) Employment placement service is or is to be provided; 70

(m) Exterminating service is or is to be provided; 71

(n) Physical fitness facility service is or is to be 72  
provided; 73

(o) Recreation and sports club service is or is to be 74  
provided; 75

(p) On and after August 1, 2003, satellite broadcasting 76  
service is or is to be provided; 77

(q) On and after August 1, 2003, personal care service is 78  
or is to be provided to an individual. As used in this division, 79  
"personal care service" includes skin care, the application of 80  
cosmetics, manicuring, pedicuring, hair removal, tattooing, body 81  
piercing, tanning, massage, and other similar services. 82  
"Personal care service" does not include a service provided by 83  
or on the order of a licensed physician or licensed 84  
chiropractor, or the cutting, coloring, or styling of an 85  
individual's hair. 86

(r) On and after August 1, 2003, the transportation of 87  
persons by motor vehicle or aircraft is or is to be provided, 88  
when the transportation is entirely within this state, except 89  
for transportation provided by an ambulance service, by a 90  
transit bus, as defined in section 5735.01 of the Revised Code, 91  
and transportation provided by a citizen of the United States 92  
holding a certificate of public convenience and necessity issued 93  
under 49 U.S.C. 41102; 94

(s) On and after August 1, 2003, motor vehicle towing 95  
service is or is to be provided. As used in this division, 96  
"motor vehicle towing service" means the towing or conveyance of 97  
a wrecked, disabled, or illegally parked motor vehicle. 98

(t) On and after August 1, 2003, snow removal service is 99  
or is to be provided. As used in this division, "snow removal 100  
service" means the removal of snow by any mechanized means, but 101  
does not include the providing of such service by a person that 102

has less than five thousand dollars in sales of such service 103  
during the calendar year. 104

(u) Electronic publishing service is or is to be provided 105  
to a consumer for use in business, except that such transactions 106  
occurring between members of an affiliated group, as defined in 107  
division (B) (3) (e) of this section, are not sales. 108

(4) All transactions by which printed, imprinted, 109  
overprinted, lithographic, multilithic, blueprinted, 110  
photostatic, or other productions or reproductions of written or 111  
graphic matter are or are to be furnished or transferred; 112

(5) The production or fabrication of tangible personal 113  
property for a consideration for consumers who furnish either 114  
directly or indirectly the materials used in the production of 115  
fabrication work; and include the furnishing, preparing, or 116  
serving for a consideration of any tangible personal property 117  
consumed on the premises of the person furnishing, preparing, or 118  
serving such tangible personal property. Except as provided in 119  
section 5739.03 of the Revised Code, a construction contract 120  
pursuant to which tangible personal property is or is to be 121  
incorporated into a structure or improvement on and becoming a 122  
part of real property is not a sale of such tangible personal 123  
property. The construction contractor is the consumer of such 124  
tangible personal property, provided that the sale and 125  
installation of carpeting, the sale and installation of 126  
agricultural land tile, the sale and erection or installation of 127  
portable grain bins, or the provision of landscaping and lawn 128  
care service and the transfer of property as part of such 129  
service is never a construction contract. 130

As used in division (B) (5) of this section: 131

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used primarily in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

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

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

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

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

(9) On and after August 1, 2003, all transactions by which 161  
tangible personal property is or is to be stored, except such 162  
property that the consumer of the storage holds for sale in the 163  
regular course of business; 164

(10) All transactions in which "guaranteed auto 165  
protection" is provided whereby a person promises to pay to the 166  
consumer the difference between the amount the consumer receives 167  
from motor vehicle insurance and the amount the consumer owes to 168  
a person holding title to or a lien on the consumer's motor 169  
vehicle in the event the consumer's motor vehicle suffers a 170  
total loss under the terms of the motor vehicle insurance policy 171  
or is stolen and not recovered, if the protection and its price 172  
are included in the purchase or lease agreement; 173

(11) (a) Except as provided in division (B) (11) (b) of this 174  
section, on and after October 1, 2009, all transactions by which 175  
health care services are paid for, reimbursed, provided, 176  
delivered, arranged for, or otherwise made available by a 177  
medicaid health insuring corporation pursuant to the 178  
corporation's contract with the state. 179

(b) If the centers for medicare and medicaid services of 180  
the United States department of health and human services 181  
determines that the taxation of transactions described in 182  
division (B) (11) (a) of this section constitutes an impermissible 183  
health care-related tax under the "Social Security Act," section 184  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 185  
the medicaid director shall notify the tax commissioner of that 186  
determination. Beginning with the first day of the month 187  
following that notification, the transactions described in 188  
division (B) (11) (a) of this section are not sales for the 189  
purposes of this chapter or Chapter 5741. of the Revised Code. 190

The tax commissioner shall order that the collection of taxes 191  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 192  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 193  
for transactions occurring on or after that date. 194

(12) All transactions by which a specified digital product 195  
is provided for permanent use or less than permanent use, 196  
regardless of whether continued payment is required. 197

Except as provided in this section, "sale" and "selling" 198  
do not include transfers of interest in leased property where 199  
the original lessee and the terms of the original lease 200  
agreement remain unchanged, or professional, insurance, or 201  
personal service transactions that involve the transfer of 202  
tangible personal property as an inconsequential element, for 203  
which no separate charges are made. 204

(C) "Vendor" means the person providing the service or by 205  
whom the transfer effected or license given by a sale is or is 206  
to be made or given and, for sales described in division (B)(3) 207  
(i) of this section, the telecommunications service vendor that 208  
provides the nine hundred telephone service; if two or more 209  
persons are engaged in business at the same place of business 210  
under a single trade name in which all collections on account of 211  
sales by each are made, such persons shall constitute a single 212  
vendor. 213

Physicians, dentists, hospitals, and veterinarians who are 214  
engaged in selling tangible personal property as received from 215  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 216  
articles, are vendors. Veterinarians who are engaged in 217  
transferring to others for a consideration drugs, the dispensing 218  
of which does not require an order of a licensed veterinarian or 219  
physician under federal law, are vendors. 220

(D) (1) "Consumer" means the person for whom the service is 221  
provided, to whom the transfer effected or license given by a 222  
sale is or is to be made or given, to whom the service described 223  
in division (B) (3) (f) or (i) of this section is charged, or to 224  
whom the admission is granted. 225

(2) Physicians, dentists, hospitals, and blood banks 226  
operated by nonprofit institutions and persons licensed to 227  
practice veterinary medicine, surgery, and dentistry are 228  
consumers of all tangible personal property and services 229  
purchased by them in connection with the practice of medicine, 230  
dentistry, the rendition of hospital or blood bank service, or 231  
the practice of veterinary medicine, surgery, and dentistry. In 232  
addition to being consumers of drugs administered by them or by 233  
their assistants according to their direction, veterinarians 234  
also are consumers of drugs that under federal law may be 235  
dispensed only by or upon the order of a licensed veterinarian 236  
or physician, when transferred by them to others for a 237  
consideration to provide treatment to animals as directed by the 238  
veterinarian. 239

(3) A person who performs a facility management, or 240  
similar service contract for a contractee is a consumer of all 241  
tangible personal property and services purchased for use in 242  
connection with the performance of such contract, regardless of 243  
whether title to any such property vests in the contractee. The 244  
purchase of such property and services is not subject to the 245  
exception for resale under division (E) (1) of this section. 246

(4) (a) In the case of a person who purchases printed 247  
matter for the purpose of distributing it or having it 248  
distributed to the public or to a designated segment of the 249  
public, free of charge, that person is the consumer of that 250

printed matter, and the purchase of that printed matter for that 251  
purpose is a sale. 252

(b) In the case of a person who produces, rather than 253  
purchases, printed matter for the purpose of distributing it or 254  
having it distributed to the public or to a designated segment 255  
of the public, free of charge, that person is the consumer of 256  
all tangible personal property and services purchased for use or 257  
consumption in the production of that printed matter. That 258  
person is not entitled to claim exemption under division (B)(42) 259  
(f) of section 5739.02 of the Revised Code for any material 260  
incorporated into the printed matter or any equipment, supplies, 261  
or services primarily used to produce the printed matter. 262

(c) The distribution of printed matter to the public or to 263  
a designated segment of the public, free of charge, is not a 264  
sale to the members of the public to whom the printed matter is 265  
distributed or to any persons who purchase space in the printed 266  
matter for advertising or other purposes. 267

(5) A person who makes sales of any of the services listed 268  
in division (B)(3) of this section is the consumer of any 269  
tangible personal property used in performing the service. The 270  
purchase of that property is not subject to the resale exception 271  
under division (E)(1) of this section. 272

(6) A person who engages in highway transportation for 273  
hire is the consumer of all packaging materials purchased by 274  
that person and used in performing the service, except for 275  
packaging materials sold by such person in a transaction 276  
separate from the service. 277

(7) In the case of a transaction for health care services 278  
under division (B)(11) of this section, a medicaid health 279

insuring corporation is the consumer of such services. The 280  
purchase of such services by a medicaid health insuring 281  
corporation is not subject to the exception for resale under 282  
division (E) (1) of this section or to the exemptions provided 283  
under divisions (B) (12), (18), (19), and (22) of section 5739.02 284  
of the Revised Code. 285

(E) "Retail sale" and "sales at retail" include all sales, 286  
except those in which the purpose of the consumer is to resell 287  
the thing transferred or benefit of the service provided, by a 288  
person engaging in business, in the form in which the same is, 289  
or is to be, received by the person. 290

(F) "Business" includes any activity engaged in by any 291  
person with the object of gain, benefit, or advantage, either 292  
direct or indirect. "Business" does not include the activity of 293  
a person in managing and investing the person's own funds. 294

(G) "Engaging in business" means commencing, conducting, 295  
or continuing in business, and liquidating a business when the 296  
liquidator thereof holds itself out to the public as conducting 297  
such business. Making a casual sale is not engaging in business. 298

(H) (1) (a) "Price," except as provided in divisions (H) (2), 299  
(3), and (4) of this section, means the total amount of 300  
consideration, including cash, credit, property, and services, 301  
for which tangible personal property or services are sold, 302  
leased, or rented, valued in money, whether received in money or 303  
otherwise, without any deduction for any of the following: 304

(i) The vendor's cost of the property sold; 305

(ii) The cost of materials used, labor or service costs, 306  
interest, losses, all costs of transportation to the vendor, all 307  
taxes imposed on the vendor, including the tax imposed under 308

Chapter 5751. of the Revised Code, and any other expense of the	309
vendor;	310
(iii) Charges by the vendor for any services necessary to	311
complete the sale;	312
(iv) On and after August 1, 2003, delivery charges. As	313
used in this division, "delivery charges" means charges by the	314
vendor for preparation and delivery to a location designated by	315
the consumer of tangible personal property or a service,	316
including transportation, shipping, postage, handling, crating,	317
and packing.	318
(v) Installation charges;	319
(vi) Credit for any trade-in.	320
(b) "Price" includes consideration received by the vendor	321
from a third party, if the vendor actually receives the	322
consideration from a party other than the consumer, and the	323
consideration is directly related to a price reduction or	324
discount on the sale; the vendor has an obligation to pass the	325
price reduction or discount through to the consumer; the amount	326
of the consideration attributable to the sale is fixed and	327
determinable by the vendor at the time of the sale of the item	328
to the consumer; and one of the following criteria is met:	329
(i) The consumer presents a coupon, certificate, or other	330
document to the vendor to claim a price reduction or discount	331
where the coupon, certificate, or document is authorized,	332
distributed, or granted by a third party with the understanding	333
that the third party will reimburse any vendor to whom the	334
coupon, certificate, or document is presented;	335
(ii) The consumer identifies the consumer's self to the	336
seller as a member of a group or organization entitled to a	337

price reduction or discount. A preferred customer card that is 338  
available to any patron does not constitute membership in such a 339  
group or organization. 340

(iii) The price reduction or discount is identified as a 341  
third party price reduction or discount on the invoice received 342  
by the consumer, or on a coupon, certificate, or other document 343  
presented by the consumer. 344

(c) "Price" does not include any of the following: 345

(i) Discounts, including cash, term, or coupons that are 346  
not reimbursed by a third party that are allowed by a vendor and 347  
taken by a consumer on a sale; 348

(ii) Interest, financing, and carrying charges from credit 349  
extended on the sale of tangible personal property or services, 350  
if the amount is separately stated on the invoice, bill of sale, 351  
or similar document given to the purchaser; 352

(iii) Any taxes legally imposed directly on the consumer 353  
that are separately stated on the invoice, bill of sale, or 354  
similar document given to the consumer. For the purpose of this 355  
division, the tax imposed under Chapter 5751. of the Revised 356  
Code is not a tax directly on the consumer, even if the tax or a 357  
portion thereof is separately stated. 358

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 359  
this section, any discount allowed by an automobile manufacturer 360  
to its employee, or to the employee of a supplier, on the 361  
purchase of a new motor vehicle from a new motor vehicle dealer 362  
in this state. 363

(v) The dollar value of a gift card that is not sold by a 364  
vendor or purchased by a consumer and that is redeemed by the 365  
consumer in purchasing tangible personal property or services if 366

the vendor is not reimbursed and does not receive compensation 367  
from a third party to cover all or part of the gift card value. 368  
For the purposes of this division, a gift card is not sold by a 369  
vendor or purchased by a consumer if it is distributed pursuant 370  
to an awards, loyalty, or promotional program. Past and present 371  
purchases of tangible personal property or services by the 372  
consumer shall not be treated as consideration exchanged for a 373  
gift card. 374

(2) In the case of a sale of any new motor vehicle by a 375  
new motor vehicle dealer, as defined in section 4517.01 of the 376  
Revised Code, in which another motor vehicle is accepted by the 377  
dealer as part of the consideration received, "price" has the 378  
same meaning as in division (H)(1) of this section, reduced by 379  
the credit afforded the consumer by the dealer for the motor 380  
vehicle received in trade. 381

(3) In the case of a sale of any watercraft or outboard 382  
motor by a watercraft dealer licensed in accordance with section 383  
1547.543 of the Revised Code, in which another watercraft, 384  
watercraft and trailer, or outboard motor is accepted by the 385  
dealer as part of the consideration received, "price" has the 386  
same meaning as in division (H)(1) of this section, reduced by 387  
the credit afforded the consumer by the dealer for the 388  
watercraft, watercraft and trailer, or outboard motor received 389  
in trade. As used in this division, "watercraft" includes an 390  
outdrive unit attached to the watercraft. 391

(4) In the case of transactions for health care services 392  
under division (B)(11) of this section, "price" means the amount 393  
of managed care premiums received each month by a medicaid 394  
health insuring corporation. 395

(I) "Receipts" means the total amount of the prices of the 396

sales of vendors, provided that the dollar value of gift cards 397  
distributed pursuant to an awards, loyalty, or promotional 398  
program, and cash discounts allowed and taken on sales at the 399  
time they are consummated are not included, minus any amount 400  
deducted as a bad debt pursuant to section 5739.121 of the 401  
Revised Code. "Receipts" does not include the sale price of 402  
property returned or services rejected by consumers when the 403  
full sale price and tax are refunded either in cash or by 404  
credit. 405

(J) "Place of business" means any location at which a 406  
person engages in business. 407

(K) "Premises" includes any real property or portion 408  
thereof upon which any person engages in selling tangible 409  
personal property at retail or making retail sales and also 410  
includes any real property or portion thereof designated for, or 411  
devoted to, use in conjunction with the business engaged in by 412  
such person. 413

(L) "Casual sale" means a sale of an item of tangible 414  
personal property that was obtained by the person making the 415  
sale, through purchase or otherwise, for the person's own use 416  
and was previously subject to any state's taxing jurisdiction on 417  
its sale or use, and includes such items acquired for the 418  
seller's use that are sold by an auctioneer employed directly by 419  
the person for such purpose, provided the location of such sales 420  
is not the auctioneer's permanent place of business. As used in 421  
this division, "permanent place of business" includes any 422  
location where such auctioneer has conducted more than two 423  
auctions during the year. 424

(M) "Hotel" means every establishment kept, used, 425  
maintained, advertised, or held out to the public to be a place 426

where sleeping accommodations are offered to guests, in which 427  
five or more rooms are used for the accommodation of such 428  
guests, whether the rooms are in one or several structures, 429  
except as otherwise provided in division (G) of section 5739.09 430  
of the Revised Code. 431

(N) "Transient guests" means persons occupying a room or 432  
rooms for sleeping accommodations for less than thirty 433  
consecutive days. 434

(O) "Making retail sales" means the effecting of 435  
transactions wherein one party is obligated to pay the price and 436  
the other party is obligated to provide a service or to transfer 437  
title to or possession of the item sold. "Making retail sales" 438  
does not include the preliminary acts of promoting or soliciting 439  
the retail sales, other than the distribution of printed matter 440  
which displays or describes and prices the item offered for 441  
sale, nor does it include delivery of a predetermined quantity 442  
of tangible personal property or transportation of property or 443  
personnel to or from a place where a service is performed. 444

(P) "Used directly in the rendition of a public utility 445  
service" means that property that is to be incorporated into and 446  
will become a part of the consumer's production, transmission, 447  
transportation, or distribution system and that retains its 448  
classification as tangible personal property after such 449  
incorporation; fuel or power used in the production, 450  
transmission, transportation, or distribution system; and 451  
tangible personal property used in the repair and maintenance of 452  
the production, transmission, transportation, or distribution 453  
system, including only such motor vehicles as are specially 454  
designed and equipped for such use. Tangible personal property 455  
and services used primarily in providing highway transportation 456

for hire are not used directly in the rendition of a public 457  
utility service. In this definition, "public utility" includes a 458  
citizen of the United States holding, and required to hold, a 459  
certificate of public convenience and necessity issued under 49 460  
U.S.C. 41102. 461

(Q) "Refining" means removing or separating a desirable 462  
product from raw or contaminated materials by distillation or 463  
physical, mechanical, or chemical processes. 464

(R) "Assembly" and "assembling" mean attaching or fitting 465  
together parts to form a product, but do not include packaging a 466  
product. 467

(S) "Manufacturing operation" means a process in which 468  
materials are changed, converted, or transformed into a 469  
different state or form from which they previously existed and 470  
includes refining materials, assembling parts, and preparing raw 471  
materials and parts by mixing, measuring, blending, or otherwise 472  
committing such materials or parts to the manufacturing process. 473  
"Manufacturing operation" does not include packaging. 474

(T) "Fiscal officer" means, with respect to a regional 475  
transit authority, the secretary-treasurer thereof, and with 476  
respect to a county that is a transit authority, the fiscal 477  
officer of the county transit board if one is appointed pursuant 478  
to section 306.03 of the Revised Code or the county auditor if 479  
the board of county commissioners operates the county transit 480  
system. 481

(U) "Transit authority" means a regional transit authority 482  
created pursuant to section 306.31 of the Revised Code or a 483  
county in which a county transit system is created pursuant to 484  
section 306.01 of the Revised Code. For the purposes of this 485

chapter, a transit authority must extend to at least the entire 486  
area of a single county. A transit authority that includes 487  
territory in more than one county must include all the area of 488  
the most populous county that is a part of such transit 489  
authority. County population shall be measured by the most 490  
recent census taken by the United States census bureau. 491

(V) "Legislative authority" means, with respect to a 492  
regional transit authority, the board of trustees thereof, and 493  
with respect to a county that is a transit authority, the board 494  
of county commissioners. 495

(W) "Territory of the transit authority" means all of the 496  
area included within the territorial boundaries of a transit 497  
authority as they from time to time exist. Such territorial 498  
boundaries must at all times include all the area of a single 499  
county or all the area of the most populous county that is a 500  
part of such transit authority. County population shall be 501  
measured by the most recent census taken by the United States 502  
census bureau. 503

(X) "Providing a service" means providing or furnishing 504  
anything described in division (B) (3) of this section for 505  
consideration. 506

(Y) (1) (a) "Automatic data processing" means processing of 507  
others' data, including keypunching or similar data entry 508  
services together with verification thereof, or providing access 509  
to computer equipment for the purpose of processing data. 510

(b) "Computer services" means providing services 511  
consisting of specifying computer hardware configurations and 512  
evaluating technical processing characteristics, computer 513  
programming, and training of computer programmers and operators, 514

provided in conjunction with and to support the sale, lease, or 515  
operation of taxable computer equipment or systems. 516

(c) "Electronic information services" means providing 517  
access to computer equipment by means of telecommunications 518  
equipment for the purpose of either of the following: 519

(i) Examining or acquiring data stored in or accessible to 520  
the computer equipment; 521

(ii) Placing data into the computer equipment to be 522  
retrieved by designated recipients with access to the computer 523  
equipment. 524

For transactions occurring on or after the effective date 525  
of the amendment of this section by H.B. 157 of the 127th 526  
general assembly, December 21, 2007, "electronic information 527  
services" does not include electronic publishing as defined in 528  
division (LLL) of this section. 529

(d) "Automatic data processing, computer services, or 530  
electronic information services" shall not include personal or 531  
professional services. 532

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 533  
section, "personal and professional services" means all services 534  
other than automatic data processing, computer services, or 535  
electronic information services, including but not limited to: 536

(a) Accounting and legal services such as advice on tax 537  
matters, asset management, budgetary matters, quality control, 538  
information security, and auditing and any other situation where 539  
the service provider receives data or information and studies, 540  
alters, analyzes, interprets, or adjusts such material; 541

(b) Analyzing business policies and procedures; 542

(c) Identifying management information needs;	543
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	544 545 546
(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;	547 548 549 550 551
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	552 553 554
(g) Testing of business procedures;	555
(h) Training personnel in business procedure applications;	556
(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;	557 558 559 560 561 562 563
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	564 565
The services listed in divisions (Y) (2) (a) to (j) of this section are not automatic data processing or computer services.	566 567
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	568 569 570

(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;

(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;

(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.

(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 communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where

the consumer's primary purpose for the underlying transaction is 601  
the processed data or information; 602

(b) Installation or maintenance of wiring or equipment on 603  
a customer's premises; 604

(c) Tangible personal property; 605

(d) Advertising, including directory advertising; 606

(e) Billing and collection services provided to third 607  
parties; 608

(f) Internet access service; 609

(g) Radio and television audio and video programming 610  
services, regardless of the medium, including the furnishing of 611  
transmission, conveyance, and routing of such services by the 612  
programming service provider. Radio and television audio and 613  
video programming services include, but are not limited to, 614  
cable service, as defined in 47 U.S.C. 522(6), and audio and 615  
video programming services delivered by commercial mobile radio 616  
service providers, as defined in 47 C.F.R. 20.3; 617

(h) Ancillary service; 618

(i) Digital products delivered electronically, including 619  
software, music, video, reading materials, or ring tones. 620

(2) "Ancillary service" means a service that is associated 621  
with or incidental to the provision of telecommunications 622  
service, including conference bridging service, detailed 623  
telecommunications billing service, directory assistance, 624  
vertical service, and voice mail service. As used in this 625  
division: 626

(a) "Conference bridging service" means an ancillary 627

service that links two or more participants of an audio or video conference call, including providing a telephone number. 628  
629

"Conference bridging service" does not include 630  
telecommunications services used to reach the conference bridge. 631

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. 632  
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(c) "Directory assistance" means an ancillary service of providing telephone number or address information. 635  
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(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. 637  
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(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. 642  
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(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 telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer. 647  
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(4) "Prepaid calling service" means the right to access 657  
exclusively telecommunications services, which must be paid for 658  
in advance and which enables the origination of calls using an 659  
access number or authorization code, whether manually or 660  
electronically dialed, and that is sold in predetermined units 661  
or dollars of which the number declines with use in a known 662  
amount. 663

(5) "Prepaid wireless calling service" means a 664  
telecommunications service that provides the right to utilize 665  
mobile telecommunications service as well as other non- 666  
telecommunications services, including the download of digital 667  
products delivered electronically, and content and ancillary 668  
services, that must be paid for in advance and that is sold in 669  
predetermined units or dollars of which the number declines with 670  
use in a known amount. 671

(6) "Value-added non-voice data service" means a 672  
telecommunications service in which computer processing 673  
applications are used to act on the form, content, code, or 674  
protocol of the information or data primarily for a purpose 675  
other than transmission, conveyance, or routing. 676

(7) "Coin-operated telephone service" means a 677  
telecommunications service paid for by inserting money into a 678  
telephone accepting direct deposits of money to operate. 679

(8) "Customer" has the same meaning as in section 5739.034 680  
of the Revised Code. 681

(BB) "Laundry and dry cleaning services" means removing 682  
soil or dirt from towels, linens, articles of clothing, or other 683  
fabric items that belong to others and supplying towels, linens, 684  
articles of clothing, or other fabric items. "Laundry and dry 685

cleaning services" does not include the provision of self- 686  
service facilities for use by consumers to remove soil or dirt 687  
from towels, linens, articles of clothing, or other fabric 688  
items. 689

(CC) "Magazines distributed as controlled circulation 690  
publications" means magazines containing at least twenty-four 691  
pages, at least twenty-five per cent editorial content, issued 692  
at regular intervals four or more times a year, and circulated 693  
without charge to the recipient, provided that such magazines 694  
are not owned or controlled by individuals or business concerns 695  
which conduct such publications as an auxiliary to, and 696  
essentially for the advancement of the main business or calling 697  
of, those who own or control them. 698

(DD) "Landscaping and lawn care service" means the 699  
services of planting, seeding, sodding, removing, cutting, 700  
trimming, pruning, mulching, aerating, applying chemicals, 701  
watering, fertilizing, and providing similar services to 702  
establish, promote, or control the growth of trees, shrubs, 703  
flowers, grass, ground cover, and other flora, or otherwise 704  
maintaining a lawn or landscape grown or maintained by the owner 705  
for ornamentation or other nonagricultural purpose. However, 706  
"landscaping and lawn care service" does not include the 707  
providing of such services by a person who has less than five 708  
thousand dollars in sales of such services during the calendar 709  
year. 710

(EE) "Private investigation and security service" means 711  
the performance of any activity for which the provider of such 712  
service is required to be licensed pursuant to Chapter 4749. of 713  
the Revised Code, or would be required to be so licensed in 714  
performing such services in this state, and also includes the 715

services of conducting polygraph examinations and of monitoring 716  
or overseeing the activities on or in, or the condition of, the 717  
consumer's home, business, or other facility by means of 718  
electronic or similar monitoring devices. "Private investigation 719  
and security service" does not include special duty services 720  
provided by off-duty police officers, deputy sheriffs, and other 721  
peace officers regularly employed by the state or a political 722  
subdivision. 723

(FF) "Information services" means providing conversation, 724  
giving consultation or advice, playing or making a voice or 725  
other recording, making or keeping a record of the number of 726  
callers, and any other service provided to a consumer by means 727  
of a nine hundred telephone call, except when the nine hundred 728  
telephone call is the means by which the consumer makes a 729  
contribution to a recognized charity. 730

(GG) "Research and development" means designing, creating, 731  
or formulating new or enhanced products, equipment, or 732  
manufacturing processes, and also means conducting scientific or 733  
technological inquiry and experimentation in the physical 734  
sciences with the goal of increasing scientific knowledge which 735  
may reveal the bases for new or enhanced products, equipment, or 736  
manufacturing processes. 737

(HH) "Qualified research and development equipment" means 738  
capitalized tangible personal property, and leased personal 739  
property that would be capitalized if purchased, used by a 740  
person primarily to perform research and development. Tangible 741  
personal property primarily used in testing, as defined in 742  
division (A)(4) of section 5739.011 of the Revised Code, or used 743  
for recording or storing test results, is not qualified research 744  
and development equipment unless such property is primarily used 745

by the consumer in testing the product, equipment, or 746  
manufacturing process being created, designed, or formulated by 747  
the consumer in the research and development activity or in 748  
recording or storing such test results. 749

(II) "Building maintenance and janitorial service" means 750  
cleaning the interior or exterior of a building and any tangible 751  
personal property located therein or thereon, including any 752  
services incidental to such cleaning for which no separate 753  
charge is made. However, "building maintenance and janitorial 754  
service" does not include the providing of such service by a 755  
person who has less than five thousand dollars in sales of such 756  
service during the calendar year. As used in this division, 757  
"cleaning" does not include sanitation services necessary for an 758  
establishment described in 21 U.S.C. 608 to comply with rules 759  
and regulations adopted pursuant to that section. 760

(JJ) "Employment service" means providing or supplying 761  
personnel, on a temporary or long-term basis, to perform work or 762  
labor under the supervision or control of another, when the 763  
personnel so provided or supplied receive their wages, salary, 764  
or other compensation from the provider or supplier of the 765  
employment service or from a third party that provided or 766  
supplied the personnel to the provider or supplier. "Employment 767  
service" does not include: 768

(1) Acting as a contractor or subcontractor, where the 769  
personnel performing the work are not under the direct control 770  
of the purchaser. 771

(2) Medical and health care services. 772

(3) Supplying personnel to a purchaser pursuant to a 773  
contract of at least one year between the service provider and 774

the purchaser that specifies that each employee covered under 775  
the contract is assigned to the purchaser on a permanent basis. 776

(4) Transactions between members of an affiliated group, 777  
as defined in division (B) (3) (e) of this section. 778

(5) Transactions where the personnel so provided or 779  
supplied by a provider or supplier to a purchaser of an 780  
employment service are then provided or supplied by that 781  
purchaser to a third party as an employment service, except 782  
"employment service" does include the transaction between that 783  
purchaser and the third party. 784

(KK) "Employment placement service" means locating or 785  
finding employment for a person or finding or locating an 786  
employee to fill an available position. 787

(LL) "Exterminating service" means eradicating or 788  
attempting to eradicate vermin infestations from a building or 789  
structure, or the area surrounding a building or structure, and 790  
includes activities to inspect, detect, or prevent vermin 791  
infestation of a building or structure. 792

(MM) "Physical fitness facility service" means all 793  
transactions by which a membership is granted, maintained, or 794  
renewed, including initiation fees, membership dues, renewal 795  
fees, monthly minimum fees, and other similar fees and dues, by 796  
a physical fitness facility such as an athletic club, health 797  
spa, or gymnasium, which entitles the member to use the facility 798  
for physical exercise. 799

(NN) "Recreation and sports club service" means all 800  
transactions by which a membership is granted, maintained, or 801  
renewed, including initiation fees, membership dues, renewal 802  
fees, monthly minimum fees, and other similar fees and dues, by 803

a recreation and sports club, which entitles the member to use 804  
the facilities of the organization. "Recreation and sports club" 805  
means an organization that has ownership of, or controls or 806  
leases on a continuing, long-term basis, the facilities used by 807  
its members and includes an aviation club, gun or shooting club, 808  
yacht club, card club, swimming club, tennis club, golf club, 809  
country club, riding club, amateur sports club, or similar 810  
organization. 811

(OO) "Livestock" means farm animals commonly raised for 812  
food, food production, or other agricultural purposes, 813  
including, but not limited to, cattle, sheep, goats, swine, 814  
poultry, and captive deer. "Livestock" does not include 815  
invertebrates, amphibians, reptiles, domestic pets, animals for 816  
use in laboratories or for exhibition, or other animals not 817  
commonly raised for food or food production. 818

(PP) "Livestock structure" means a building or structure 819  
used exclusively for the housing, raising, feeding, or 820  
sheltering of livestock, and includes feed storage or handling 821  
structures and structures for livestock waste handling. 822

(QQ) "Horticulture" means the growing, cultivation, and 823  
production of flowers, fruits, herbs, vegetables, sod, 824  
mushrooms, and nursery stock. As used in this division, "nursery 825  
stock" has the same meaning as in section 927.51 of the Revised 826  
Code. 827

(RR) "Horticulture structure" means a building or 828  
structure used exclusively for the commercial growing, raising, 829  
or overwintering of horticultural products, and includes the 830  
area used for stocking, storing, and packing horticultural 831  
products when done in conjunction with the production of those 832  
products. 833

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

(TT) "Professional racing team" means a person that employs at least twenty full-time employees for the purpose of conducting a motor vehicle racing business for profit. The person must conduct the business with the purpose of racing one or more motor racing vehicles in at least ten competitive professional racing events each year that comprise all or part of a motor racing series sanctioned by one or more motor racing sanctioning organizations. A "motor racing vehicle" means a vehicle for which the chassis, engine, and parts are designed exclusively for motor racing, and does not include a stock or production model vehicle that may be modified for use in racing. For the purposes of this division:

(1) A "competitive professional racing event" is a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations, at which aggregate cash prizes in excess of eight hundred thousand dollars are awarded to the competitors.

(2) "Full-time employee" means an individual who is employed for consideration for thirty-five or more hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(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 864  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 865  
trailers where the amount of consideration may be increased or 866  
decreased by reference to the amount realized upon the sale or 867  
disposition of the property. "Lease" or "rental" does not 868  
include: 869

(a) A transfer of possession or control of tangible 870  
personal property under a security agreement or a deferred 871  
payment plan that requires the transfer of title upon completion 872  
of the required payments; 873

(b) A transfer of possession or control of tangible 874  
personal property under an agreement that requires the transfer 875  
of title upon completion of required payments and payment of an 876  
option price that does not exceed the greater of one hundred 877  
dollars or one per cent of the total required payments; 878

(c) Providing tangible personal property along with an 879  
operator for a fixed or indefinite period of time, if the 880  
operator is necessary for the property to perform as designed. 881  
For purposes of this division, the operator must do more than 882  
maintain, inspect, or set up the tangible personal property. 883

(2) "Lease" and "rental," as defined in division (UU) of 884  
this section, shall not apply to leases or rentals that exist 885  
before June 26, 2003. 886

(3) "Lease" and "rental" have the same meaning as in 887  
division (UU) (1) of this section regardless of whether a 888  
transaction is characterized as a lease or rental under 889  
generally accepted accounting principles, the Internal Revenue 890  
Code, Title XIII of the Revised Code, or other federal, state, 891  
or local laws. 892

(VV) "Mobile telecommunications service" has the same 893  
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 894  
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 895  
amended, and, on and after August 1, 2003, includes related fees 896  
and ancillary services, including universal service fees, 897  
detailed billing service, directory assistance, service 898  
initiation, voice mail service, and vertical services, such as 899  
caller ID and three-way calling. 900

(WW) "Certified service provider" has the same meaning as 901  
in section 5740.01 of the Revised Code. 902

(XX) "Satellite broadcasting service" means the 903  
distribution or broadcasting of programming or services by 904  
satellite directly to the subscriber's receiving equipment 905  
without the use of ground receiving or distribution equipment, 906  
except the subscriber's receiving equipment or equipment used in 907  
the uplink process to the satellite, and includes all service 908  
and rental charges, premium channels or other special services, 909  
installation and repair service charges, and any other charges 910  
having any connection with the provision of the satellite 911  
broadcasting service. 912

(YY) "Tangible personal property" means personal property 913  
that can be seen, weighed, measured, felt, or touched, or that 914  
is in any other manner perceptible to the senses. For purposes 915  
of this chapter and Chapter 5741. of the Revised Code, "tangible 916  
personal property" includes motor vehicles, electricity, water, 917  
gas, steam, and prewritten computer software. 918

(ZZ) "Direct mail" means printed material delivered or 919  
distributed by United States mail or other delivery service to a 920  
mass audience or to addressees on a mailing list provided by the 921  
consumer or at the direction of the consumer when the cost of 922

the items are not billed directly to the recipients. "Direct 923  
mail" includes tangible personal property supplied directly or 924  
indirectly by the consumer to the direct mail vendor for 925  
inclusion in the package containing the printed material. 926  
"Direct mail" does not include multiple items of printed 927  
material delivered to a single address. 928

(AAA) "Computer" means an electronic device that accepts 929  
information in digital or similar form and manipulates it for a 930  
result based on a sequence of instructions. 931

(BBB) "Computer software" means a set of coded 932  
instructions designed to cause a computer or automatic data 933  
processing equipment to perform a task. 934

(CCC) "Delivered electronically" means delivery of 935  
computer software from the seller to the purchaser by means 936  
other than tangible storage media. 937

(DDD) "Prewritten computer software" means computer 938  
software, including prewritten upgrades, that is not designed 939  
and developed by the author or other creator to the 940  
specifications of a specific purchaser. The combining of two or 941  
more prewritten computer software programs or prewritten 942  
portions thereof does not cause the combination to be other than 943  
prewritten computer software. "Prewritten computer software" 944  
includes software designed and developed by the author or other 945  
creator to the specifications of a specific purchaser when it is 946  
sold to a person other than the purchaser. If a person modifies 947  
or enhances computer software of which the person is not the 948  
author or creator, the person shall be deemed to be the author 949  
or creator only of such person's modifications or enhancements. 950  
Prewritten computer software or a prewritten portion thereof 951  
that is modified or enhanced to any degree, where such 952

modification or enhancement is designed and developed to the 953  
specifications of a specific purchaser, remains prewritten 954  
computer software; provided, however, that where there is a 955  
reasonable, separately stated charge or an invoice or other 956  
statement of the price given to the purchaser for the 957  
modification or enhancement, the modification or enhancement 958  
shall not constitute prewritten computer software. 959

(EEE) (1) "Food" means substances, whether in liquid, 960  
concentrated, solid, frozen, dried, or dehydrated form, that are 961  
sold for ingestion or chewing by humans and are consumed for 962  
their taste or nutritional value. "Food" does not include 963  
alcoholic beverages, dietary supplements, soft drinks, or 964  
tobacco. 965

(2) As used in division (EEE) (1) of this section: 966

(a) "Alcoholic beverages" means beverages that are 967  
suitable for human consumption and contain one-half of one per 968  
cent or more of alcohol by volume. 969

(b) "Dietary supplements" means any product, other than 970  
tobacco, that is intended to supplement the diet and that is 971  
intended for ingestion in tablet, capsule, powder, softgel, 972  
gelcap, or liquid form, or, if not intended for ingestion in 973  
such a form, is not represented as conventional food for use as 974  
a sole item of a meal or of the diet; that is required to be 975  
labeled as a dietary supplement, identifiable by the "supplement 976  
facts" box found on the label, as required by 21 C.F.R. 101.36; 977  
and that contains one or more of the following dietary 978  
ingredients: 979

(i) A vitamin; 980

(ii) A mineral; 981

(iii) An herb or other botanical;	982
(iv) An amino acid;	983
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	984 985
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section.	986 987 988
(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	989 990 991 992 993
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	994 995
(FFF) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	996 997 998 999 1000 1001 1002 1003 1004
(GGG) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	1005 1006 1007 1008
(HHH) "Durable medical equipment" means equipment,	1009

including repair and replacement parts for such equipment, that 1010  
can withstand repeated use, is primarily and customarily used to 1011  
serve a medical purpose, generally is not useful to a person in 1012  
the absence of illness or injury, and is not worn in or on the 1013  
body. "Durable medical equipment" does not include mobility 1014  
enhancing equipment. 1015

(III) "Mobility enhancing equipment" means equipment, 1016  
including repair and replacement parts for such equipment, that 1017  
is primarily and customarily used to provide or increase the 1018  
ability to move from one place to another and is appropriate for 1019  
use either in a home or a motor vehicle, that is not generally 1020  
used by persons with normal mobility, and that does not include 1021  
any motor vehicle or equipment on a motor vehicle normally 1022  
provided by a motor vehicle manufacturer. "Mobility enhancing 1023  
equipment" does not include durable medical equipment. 1024

(JJJ) "Prosthetic device" means a replacement, corrective, 1025  
or supportive device, including repair and replacement parts for 1026  
the device, worn on or in the human body to artificially replace 1027  
a missing portion of the body, prevent or correct physical 1028  
deformity or malfunction, or support a weak or deformed portion 1029  
of the body. As used in this division, "prosthetic device" does 1030  
not include corrective eyeglasses, contact lenses, or dental 1031  
prosthesis. 1032

(KKK) (1) "Fractional aircraft ownership program" means a 1033  
program in which persons within an affiliated group sell and 1034  
manage fractional ownership program aircraft, provided that at 1035  
least one hundred airworthy aircraft are operated in the program 1036  
and the program meets all of the following criteria: 1037

(a) Management services are provided by at least one 1038  
program manager within an affiliated group on behalf of the 1039

fractional owners. 1040

(b) Each program aircraft is owned or possessed by at 1041  
least one fractional owner. 1042

(c) Each fractional owner owns or possesses at least a 1043  
one-sixteenth interest in at least one fixed-wing program 1044  
aircraft. 1045

(d) A dry-lease aircraft interchange arrangement is in 1046  
effect among all of the fractional owners. 1047

(e) Multi-year program agreements are in effect regarding 1048  
the fractional ownership, management services, and dry-lease 1049  
aircraft interchange arrangement aspects of the program. 1050

(2) As used in division (KKK) (1) of this section: 1051

(a) "Affiliated group" has the same meaning as in division 1052  
(B) (3) (e) of this section. 1053

(b) "Fractional owner" means a person that owns or 1054  
possesses at least a one-sixteenth interest in a program 1055  
aircraft and has entered into the agreements described in 1056  
division (KKK) (1) (e) of this section. 1057

(c) "Fractional ownership program aircraft" or "program 1058  
aircraft" means a turbojet aircraft that is owned or possessed 1059  
by a fractional owner and that has been included in a dry-lease 1060  
aircraft interchange arrangement and agreement under divisions 1061  
(KKK) (1) (d) and (e) of this section, or an aircraft a program 1062  
manager owns or possesses primarily for use in a fractional 1063  
aircraft ownership program. 1064

(d) "Management services" means administrative and 1065  
aviation support services furnished under a fractional aircraft 1066  
ownership program in accordance with a management services 1067

agreement under division (KKK) (1) (e) of this section, and 1068  
offered by the program manager to the fractional owners, 1069  
including, at a minimum, the establishment and implementation of 1070  
safety guidelines; the coordination of the scheduling of the 1071  
program aircraft and crews; program aircraft maintenance; 1072  
program aircraft insurance; crew training for crews employed, 1073  
furnished, or contracted by the program manager or the 1074  
fractional owner; the satisfaction of record-keeping 1075  
requirements; and the development and use of an operations 1076  
manual and a maintenance manual for the fractional aircraft 1077  
ownership program. 1078

(e) "Program manager" means the person that offers 1079  
management services to fractional owners pursuant to a 1080  
management services agreement under division (KKK) (1) (e) of this 1081  
section. 1082

(LLL) "Electronic publishing" means providing access to 1083  
one or more of the following primarily for business customers, 1084  
including the federal government or a state government or a 1085  
political subdivision thereof, to conduct research: news; 1086  
business, financial, legal, consumer, or credit materials; 1087  
editorials, columns, reader commentary, or features; photos or 1088  
images; archival or research material; legal notices, identity 1089  
verification, or public records; scientific, educational, 1090  
instructional, technical, professional, trade, or other literary 1091  
materials; or other similar information which has been gathered 1092  
and made available by the provider to the consumer in an 1093  
electronic format. Providing electronic publishing includes the 1094  
functions necessary for the acquisition, formatting, editing, 1095  
storage, and dissemination of data or information that is the 1096  
subject of a sale. 1097

(MMM) "Medicaid health insuring corporation" means a health insuring corporation that holds a certificate of authority under Chapter 1751. of the Revised Code and is under contract with the department of job and family services pursuant to section 5111.17 of the Revised Code.

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

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

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

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

As used in division (QQQ) of this section:

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

(2) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds, including digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(3) "Digital book" means a work that is generally 1127  
recognized in the ordinary and usual sense as a book. 1128

(4) "Electronically transferred" means obtained by the 1129  
purchaser by means other than tangible storage media. 1130

(RRR) "Municipal gas utility" means a municipal 1131  
corporation that owns or operates a system for the distribution 1132  
of natural gas. 1133

**Sec. 5739.02.** For the purpose of providing revenue with 1134  
which to meet the needs of the state, for the use of the general 1135  
revenue fund of the state, for the purpose of securing a 1136  
thorough and efficient system of common schools throughout the 1137  
state, for the purpose of affording revenues, in addition to 1138  
those from general property taxes, permitted under 1139  
constitutional limitations, and from other sources, for the 1140  
support of local governmental functions, and for the purpose of 1141  
reimbursing the state for the expense of administering this 1142  
chapter, an excise tax is hereby levied on each retail sale made 1143  
in this state. 1144

(A) (1) The tax shall be collected as provided in section 1145  
5739.025 of the Revised Code. The rate of the tax shall be five 1146  
and three-fourths per cent. The tax applies and is collectible 1147  
when the sale is made, regardless of the time when the price is 1148  
paid or delivered. 1149

(2) In the case of the lease or rental, with a fixed term 1150  
of more than thirty days or an indefinite term with a minimum 1151  
period of more than thirty days, of any motor vehicles designed 1152  
by the manufacturer to carry a load of not more than one ton, 1153  
watercraft, outboard motor, or aircraft, or of any tangible 1154  
personal property, other than motor vehicles designed by the 1155

manufacturer to carry a load of more than one ton, to be used by 1156  
the lessee or renter primarily for business purposes, the tax 1157  
shall be collected by the vendor at the time the lease or rental 1158  
is consummated and shall be calculated by the vendor on the 1159  
basis of the total amount to be paid by the lessee or renter 1160  
under the lease agreement. If the total amount of the 1161  
consideration for the lease or rental includes amounts that are 1162  
not calculated at the time the lease or rental is executed, the 1163  
tax shall be calculated and collected by the vendor at the time 1164  
such amounts are billed to the lessee or renter. In the case of 1165  
an open-end lease or rental, the tax shall be calculated by the 1166  
vendor on the basis of the total amount to be paid during the 1167  
initial fixed term of the lease or rental, and for each 1168  
subsequent renewal period as it comes due. As used in this 1169  
division, "motor vehicle" has the same meaning as in section 1170  
4501.01 of the Revised Code, and "watercraft" includes an 1171  
outdrive unit attached to the watercraft. 1172

A lease with a renewal clause and a termination penalty or 1173  
similar provision that applies if the renewal clause is not 1174  
exercised is presumed to be a sham transaction. In such a case, 1175  
the tax shall be calculated and paid on the basis of the entire 1176  
length of the lease period, including any renewal periods, until 1177  
the termination penalty or similar provision no longer applies. 1178  
The taxpayer shall bear the burden, by a preponderance of the 1179  
evidence, that the transaction or series of transactions is not 1180  
a sham transaction. 1181

(3) Except as provided in division (A)(2) of this section, 1182  
in the case of a sale, the price of which consists in whole or 1183  
in part of the lease or rental of tangible personal property, 1184  
the tax shall be measured by the installments of that lease or 1185  
rental. 1186

(4) In the case of a sale of a physical fitness facility 1187  
service or recreation and sports club service, the price of 1188  
which consists in whole or in part of a membership for the 1189  
receipt of the benefit of the service, the tax applicable to the 1190  
sale shall be measured by the installments thereof. 1191

(B) The tax does not apply to the following: 1192

(1) Sales to the state or any of its political 1193  
subdivisions, or to any other state or its political 1194  
subdivisions if the laws of that state exempt from taxation 1195  
sales made to this state and its political subdivisions; 1196

(2) Sales of food for human consumption off the premises 1197  
where sold; 1198

(3) Sales of food sold to students only in a cafeteria, 1199  
dormitory, fraternity, or sorority maintained in a private, 1200  
public, or parochial school, college, or university; 1201

(4) Sales of newspapers and sales or transfers of 1202  
magazines distributed as controlled circulation publications; 1203

(5) The furnishing, preparing, or serving of meals without 1204  
charge by an employer to an employee provided the employer 1205  
records the meals as part compensation for services performed or 1206  
work done; 1207

(6) Sales of motor fuel upon receipt, use, distribution, 1208  
or sale of which in this state a tax is imposed by the law of 1209  
this state, but this exemption shall not apply to the sale of 1210  
motor fuel on which a refund of the tax is allowable under 1211  
division (A) of section 5735.14 of the Revised Code; and the tax 1212  
commissioner may deduct the amount of tax levied by this section 1213  
applicable to the price of motor fuel when granting a refund of 1214  
motor fuel tax pursuant to division (A) of section 5735.14 of 1215

the Revised Code and shall cause the amount deducted to be paid 1216  
into the general revenue fund of this state; 1217

(7) Sales of natural gas by a natural gas company or 1218  
municipal gas utility, of water by a water-works company, or of 1219  
steam by a heating company, if in each case the thing sold is 1220  
delivered to consumers through pipes or conduits, and all sales 1221  
of communications services by a telegraph company, all terms as 1222  
defined in section 5727.01 of the Revised Code, and sales of 1223  
electricity delivered through wires; 1224

(8) Casual sales by a person, or auctioneer employed 1225  
directly by the person to conduct such sales, except as to such 1226  
sales of motor vehicles, watercraft or outboard motors required 1227  
to be titled under section 1548.06 of the Revised Code, 1228  
watercraft documented with the United States coast guard, 1229  
snowmobiles, and all-purpose vehicles as defined in section 1230  
4519.01 of the Revised Code; 1231

(9) (a) Sales of services or tangible personal property, 1232  
other than motor vehicles, mobile homes, and manufactured homes, 1233  
by churches, organizations exempt from taxation under section 1234  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1235  
organizations operated exclusively for charitable purposes as 1236  
defined in division (B) (12) of this section, provided that the 1237  
number of days on which such tangible personal property or 1238  
services, other than items never subject to the tax, are sold 1239  
does not exceed six in any calendar year, except as otherwise 1240  
provided in division (B) (9) (b) of this section. If the number of 1241  
days on which such sales are made exceeds six in any calendar 1242  
year, the church or organization shall be considered to be 1243  
engaged in business and all subsequent sales by it shall be 1244  
subject to the tax. In counting the number of days, all sales by 1245

groups within a church or within an organization shall be 1246  
considered to be sales of that church or organization. 1247

(b) The limitation on the number of days on which tax- 1248  
exempt sales may be made by a church or organization under 1249  
division (B) (9) (a) of this section does not apply to sales made 1250  
by student clubs and other groups of students of a primary or 1251  
secondary school, or a parent-teacher association, booster 1252  
group, or similar organization that raises money to support or 1253  
fund curricular or extracurricular activities of a primary or 1254  
secondary school. 1255

(c) Divisions (B) (9) (a) and (b) of this section do not 1256  
apply to sales by a noncommercial educational radio or 1257  
television broadcasting station. 1258

(10) Sales not within the taxing power of this state under 1259  
the Constitution or laws of the United States or the 1260  
Constitution of this state; 1261

(11) Except for transactions that are sales under division 1262  
(B) (3) (r) of section 5739.01 of the Revised Code, the 1263  
transportation of persons or property, unless the transportation 1264  
is by a private investigation and security service; 1265

(12) Sales of tangible personal property or services to 1266  
churches, to organizations exempt from taxation under section 1267  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1268  
nonprofit organizations operated exclusively for charitable 1269  
purposes in this state, no part of the net income of which 1270  
inures to the benefit of any private shareholder or individual, 1271  
and no substantial part of the activities of which consists of 1272  
carrying on propaganda or otherwise attempting to influence 1273  
legislation; sales to offices administering one or more homes 1274

for the aged or one or more hospital facilities exempt under 1275  
section 140.08 of the Revised Code; and sales to organizations 1276  
described in division (D) of section 5709.12 of the Revised 1277  
Code. 1278

"Charitable purposes" means the relief of poverty; the 1279  
improvement of health through the alleviation of illness, 1280  
disease, or injury; the operation of an organization exclusively 1281  
for the provision of professional, laundry, printing, and 1282  
purchasing services to hospitals or charitable institutions; the 1283  
operation of a home for the aged, as defined in section 5701.13 1284  
of the Revised Code; the operation of a radio or television 1285  
broadcasting station that is licensed by the federal 1286  
communications commission as a noncommercial educational radio 1287  
or television station; the operation of a nonprofit animal 1288  
adoption service or a county humane society; the promotion of 1289  
education by an institution of learning that maintains a faculty 1290  
of qualified instructors, teaches regular continuous courses of 1291  
study, and confers a recognized diploma upon completion of a 1292  
specific curriculum; the operation of a parent-teacher 1293  
association, booster group, or similar organization primarily 1294  
engaged in the promotion and support of the curricular or 1295  
extracurricular activities of a primary or secondary school; the 1296  
operation of a community or area center in which presentations 1297  
in music, dramatics, the arts, and related fields are made in 1298  
order to foster public interest and education therein; the 1299  
production of performances in music, dramatics, and the arts; or 1300  
the promotion of education by an organization engaged in 1301  
carrying on research in, or the dissemination of, scientific and 1302  
technological knowledge and information primarily for the 1303  
public. 1304

Nothing in this division shall be deemed to exempt sales 1305

to any organization for use in the operation or carrying on of a 1306  
trade or business, or sales to a home for the aged for use in 1307  
the operation of independent living facilities as defined in 1308  
division (A) of section 5709.12 of the Revised Code. 1309

(13) Building and construction materials and services sold 1310  
to construction contractors for incorporation into a structure 1311  
or improvement to real property under a construction contract 1312  
with this state or a political subdivision of this state, or 1313  
with the United States government or any of its agencies; 1314  
building and construction materials and services sold to 1315  
construction contractors for incorporation into a structure or 1316  
improvement to real property that are accepted for ownership by 1317  
this state or any of its political subdivisions, or by the 1318  
United States government or any of its agencies at the time of 1319  
completion of the structures or improvements; building and 1320  
construction materials sold to construction contractors for 1321  
incorporation into a horticulture structure or livestock 1322  
structure for a person engaged in the business of horticulture 1323  
or producing livestock; building materials and services sold to 1324  
a construction contractor for incorporation into a house of 1325  
public worship or religious education, or a building used 1326  
exclusively for charitable purposes under a construction 1327  
contract with an organization whose purpose is as described in 1328  
division (B) (12) of this section; building materials and 1329  
services sold to a construction contractor for incorporation 1330  
into a building under a construction contract with an 1331  
organization exempt from taxation under section 501(c) (3) of the 1332  
Internal Revenue Code of 1986 when the building is to be used 1333  
exclusively for the organization's exempt purposes; building and 1334  
construction materials sold for incorporation into the original 1335  
construction of a sports facility under section 307.696 of the 1336

Revised Code; building and construction materials and services 1337  
sold to a construction contractor for incorporation into real 1338  
property outside this state if such materials and services, when 1339  
sold to a construction contractor in the state in which the real 1340  
property is located for incorporation into real property in that 1341  
state, would be exempt from a tax on sales levied by that state; 1342  
building and construction materials for incorporation into a 1343  
transportation facility pursuant to a public-private agreement 1344  
entered into under sections 5501.70 to 5501.83 of the Revised 1345  
Code; and, until one calendar year after the construction of a 1346  
convention center that qualifies for property tax exemption 1347  
under section 5709.084 of the Revised Code is completed, 1348  
building and construction materials and services sold to a 1349  
construction contractor for incorporation into the real property 1350  
comprising that convention center; 1351

(14) Sales of ships or vessels or rail rolling stock used 1352  
or to be used principally in interstate or foreign commerce, and 1353  
repairs, alterations, fuel, and lubricants for such ships or 1354  
vessels or rail rolling stock; 1355

(15) Sales to persons primarily engaged in any of the 1356  
activities mentioned in division (B) (42) (a), (g), or (h) of this 1357  
section, to persons engaged in making retail sales, or to 1358  
persons who purchase for sale from a manufacturer tangible 1359  
personal property that was produced by the manufacturer in 1360  
accordance with specific designs provided by the purchaser, of 1361  
packages, including material, labels, and parts for packages, 1362  
and of machinery, equipment, and material for use primarily in 1363  
packaging tangible personal property produced for sale, 1364  
including any machinery, equipment, and supplies used to make 1365  
labels or packages, to prepare packages or products for 1366  
labeling, or to label packages or products, by or on the order 1367

of the person doing the packaging, or sold at retail. "Packages" 1368  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1369  
bindings, wrappings, and other similar devices and containers, 1370  
but does not include motor vehicles or bulk tanks, trailers, or 1371  
similar devices attached to motor vehicles. "Packaging" means 1372  
placing in a package. Division (B) (15) of this section does not 1373  
apply to persons engaged in highway transportation for hire. 1374

(16) Sales of food to persons using supplemental nutrition 1375  
assistance program benefits to purchase the food. As used in 1376  
this division, "food" has the same meaning as in 7 U.S.C. 2012 1377  
and federal regulations adopted pursuant to the Food and 1378  
Nutrition Act of 2008. 1379

(17) Sales to persons engaged in farming, agriculture, 1380  
horticulture, or floriculture, of tangible personal property for 1381  
use or consumption primarily in the production by farming, 1382  
agriculture, horticulture, or floriculture of other tangible 1383  
personal property for use or consumption primarily in the 1384  
production of tangible personal property for sale by farming, 1385  
agriculture, horticulture, or floriculture; or material and 1386  
parts for incorporation into any such tangible personal property 1387  
for use or consumption in production; and of tangible personal 1388  
property for such use or consumption in the conditioning or 1389  
holding of products produced by and for such use, consumption, 1390  
or sale by persons engaged in farming, agriculture, 1391  
horticulture, or floriculture, except where such property is 1392  
incorporated into real property; 1393

(18) Sales of drugs for a human being that may be 1394  
dispensed only pursuant to a prescription; insulin as recognized 1395  
in the official United States pharmacopoeia; urine and blood 1396  
testing materials when used by diabetics or persons with 1397

hypoglycemia to test for glucose or acetone; hypodermic syringes	1398
and needles when used by diabetics for insulin injections;	1399
epoetin alfa when purchased for use in the treatment of persons	1400
with medical disease; hospital beds when purchased by hospitals,	1401
nursing homes, or other medical facilities; and medical oxygen	1402
and medical oxygen-dispensing equipment when purchased by	1403
hospitals, nursing homes, or other medical facilities;	1404
(19) Sales of prosthetic devices, durable medical	1405
equipment for home use, or mobility enhancing equipment, when	1406
made pursuant to a prescription and when such devices or	1407
equipment are for use by a human being.	1408
(20) Sales of emergency and fire protection vehicles and	1409
equipment to nonprofit organizations for use solely in providing	1410
fire protection and emergency services, including trauma care	1411
and emergency medical services, for political subdivisions of	1412
the state;	1413
(21) Sales of tangible personal property manufactured in	1414
this state, if sold by the manufacturer in this state to a	1415
retailer for use in the retail business of the retailer outside	1416
of this state and if possession is taken from the manufacturer	1417
by the purchaser within this state for the sole purpose of	1418
immediately removing the same from this state in a vehicle owned	1419
by the purchaser;	1420
(22) Sales of services provided by the state or any of its	1421
political subdivisions, agencies, instrumentalities,	1422
institutions, or authorities, or by governmental entities of the	1423
state or any of its political subdivisions, agencies,	1424
instrumentalities, institutions, or authorities;	1425
(23) Sales of motor vehicles to nonresidents of this state	1426

under the circumstances described in division (B) of section	1427
5739.029 of the Revised Code;	1428
(24) Sales to persons engaged in the preparation of eggs	1429
for sale of tangible personal property used or consumed directly	1430
in such preparation, including such tangible personal property	1431
used for cleaning, sanitizing, preserving, grading, sorting, and	1432
classifying by size; packages, including material and parts for	1433
packages, and machinery, equipment, and material for use in	1434
packaging eggs for sale; and handling and transportation	1435
equipment and parts therefor, except motor vehicles licensed to	1436
operate on public highways, used in intraplant or interplant	1437
transfers or shipment of eggs in the process of preparation for	1438
sale, when the plant or plants within or between which such	1439
transfers or shipments occur are operated by the same person.	1440
"Packages" includes containers, cases, baskets, flats, fillers,	1441
filler flats, cartons, closure materials, labels, and labeling	1442
materials, and "packaging" means placing therein.	1443
(25) (a) Sales of water to a consumer for residential use;	1444
(b) Sales of water by a nonprofit corporation engaged	1445
exclusively in the treatment, distribution, and sale of water to	1446
consumers, if such water is delivered to consumers through pipes	1447
or tubing.	1448
(26) Fees charged for inspection or reinspection of motor	1449
vehicles under section 3704.14 of the Revised Code;	1450
(27) Sales to persons licensed to conduct a food service	1451
operation pursuant to section 3717.43 of the Revised Code, of	1452
tangible personal property primarily used directly for the	1453
following:	1454
(a) To prepare food for human consumption for sale;	1455

(b) To preserve food that has been or will be prepared for	1456
human consumption for sale by the food service operator, not	1457
including tangible personal property used to display food for	1458
selection by the consumer;	1459
(c) To clean tangible personal property used to prepare or	1460
serve food for human consumption for sale.	1461
(28) Sales of animals by nonprofit animal adoption	1462
services or county humane societies;	1463
(29) Sales of services to a corporation described in	1464
division (A) of section 5709.72 of the Revised Code, and sales	1465
of tangible personal property that qualifies for exemption from	1466
taxation under section 5709.72 of the Revised Code;	1467
(30) Sales and installation of agricultural land tile, as	1468
defined in division (B) (5) (a) of section 5739.01 of the Revised	1469
Code;	1470
(31) Sales and erection or installation of portable grain	1471
bins, as defined in division (B) (5) (b) of section 5739.01 of the	1472
Revised Code;	1473
(32) The sale, lease, repair, and maintenance of, parts	1474
for, or items attached to or incorporated in, motor vehicles	1475
that are primarily used for transporting tangible personal	1476
property belonging to others by a person engaged in highway	1477
transportation for hire, except for packages and packaging used	1478
for the transportation of tangible personal property;	1479
(33) Sales to the state headquarters of any veterans'	1480
organization in this state that is either incorporated and	1481
issued a charter by the congress of the United States or is	1482
recognized by the United States veterans administration, for use	1483
by the headquarters;	1484

(34) Sales to a telecommunications service vendor, mobile 1485  
telecommunications service vendor, or satellite broadcasting 1486  
service vendor of tangible personal property and services used 1487  
directly and primarily in transmitting, receiving, switching, or 1488  
recording any interactive, one- or two-way electromagnetic 1489  
communications, including voice, image, data, and information, 1490  
through the use of any medium, including, but not limited to, 1491  
poles, wires, cables, switching equipment, computers, and record 1492  
storage devices and media, and component parts for the tangible 1493  
personal property. The exemption provided in this division shall 1494  
be in lieu of all other exemptions under division (B) (42) (a) or 1495  
(n) of this section to which the vendor may otherwise be 1496  
entitled, based upon the use of the thing purchased in providing 1497  
the telecommunications, mobile telecommunications, or satellite 1498  
broadcasting service. 1499

(35) (a) Sales where the purpose of the consumer is to use 1500  
or consume the things transferred in making retail sales and 1501  
consisting of newspaper inserts, catalogues, coupons, flyers, 1502  
gift certificates, or other advertising material that prices and 1503  
describes tangible personal property offered for retail sale. 1504

(b) Sales to direct marketing vendors of preliminary 1505  
materials such as photographs, artwork, and typesetting that 1506  
will be used in printing advertising material; and of printed 1507  
matter that offers free merchandise or chances to win sweepstake 1508  
prizes and that is mailed to potential customers with 1509  
advertising material described in division (B) (35) (a) of this 1510  
section; 1511

(c) Sales of equipment such as telephones, computers, 1512  
facsimile machines, and similar tangible personal property 1513  
primarily used to accept orders for direct marketing retail 1514

sales.	1515
(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.	1516 1517 1518
For purposes of division (B) (35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.	1519 1520 1521 1522 1523 1524 1525 1526
(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;	1527 1528 1529 1530
(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;	1531 1532 1533 1534 1535 1536
(38) Sales to a professional racing team of any of the following:	1537 1538
(a) Motor racing vehicles;	1539
(b) Repair services for motor racing vehicles;	1540
(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all	1541 1542

other components of the vehicles, and all spare, replacement, 1543  
and rebuilt parts or components of the vehicles; except not 1544  
including tires, consumable fluids, paint, and accessories 1545  
consisting of instrumentation sensors and related items added to 1546  
the vehicle to collect and transmit data by means of telemetry 1547  
and other forms of communication. 1548

(39) Sales of used manufactured homes and used mobile 1549  
homes, as defined in section 5739.0210 of the Revised Code, made 1550  
on or after January 1, 2000; 1551

(40) Sales of tangible personal property and services to a 1552  
provider of electricity used or consumed directly and primarily 1553  
in generating, transmitting, or distributing electricity for use 1554  
by others, including property that is or is to be incorporated 1555  
into and will become a part of the consumer's production, 1556  
transmission, or distribution system and that retains its 1557  
classification as tangible personal property after 1558  
incorporation; fuel or power used in the production, 1559  
transmission, or distribution of electricity; energy conversion 1560  
equipment as defined in section 5727.01 of the Revised Code; and 1561  
tangible personal property and services used in the repair and 1562  
maintenance of the production, transmission, or distribution 1563  
system, including only those motor vehicles as are specially 1564  
designed and equipped for such use. The exemption provided in 1565  
this division shall be in lieu of all other exemptions in 1566  
division (B) (42) (a) or (n) of this section to which a provider 1567  
of electricity may otherwise be entitled based on the use of the 1568  
tangible personal property or service purchased in generating, 1569  
transmitting, or distributing electricity. 1570

(41) Sales to a person providing services under division 1571  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 1572

personal property and services used directly and primarily in 1573  
providing taxable services under that section. 1574

(42) Sales where the purpose of the purchaser is to do any 1575  
of the following: 1576

(a) To incorporate the thing transferred as a material or 1577  
a part into tangible personal property to be produced for sale 1578  
by manufacturing, assembling, processing, or refining; or to use 1579  
or consume the thing transferred directly in producing tangible 1580  
personal property for sale by mining, including, without 1581  
limitation, the extraction from the earth of all substances that 1582  
are classed geologically as minerals, production of crude oil 1583  
and natural gas, or directly in the rendition of a public 1584  
utility service, except that the sales tax levied by this 1585  
section shall be collected upon all meals, drinks, and food for 1586  
human consumption sold when transporting persons. Persons 1587  
engaged in rendering services in the exploration for, and 1588  
production of, crude oil and natural gas for others are deemed 1589  
engaged directly in the exploration for, and production of, 1590  
crude oil and natural gas. This paragraph does not exempt from 1591  
"retail sale" or "sales at retail" the sale of tangible personal 1592  
property that is to be incorporated into a structure or 1593  
improvement to real property. 1594

(b) To hold the thing transferred as security for the 1595  
performance of an obligation of the vendor; 1596

(c) To resell, hold, use, or consume the thing transferred 1597  
as evidence of a contract of insurance; 1598

(d) To use or consume the thing directly in commercial 1599  
fishing; 1600

(e) To incorporate the thing transferred as a material or 1601

a part into, or to use or consume the thing transferred directly 1602  
in the production of, magazines distributed as controlled 1603  
circulation publications; 1604

(f) To use or consume the thing transferred in the 1605  
production and preparation in suitable condition for market and 1606  
sale of printed, imprinted, overprinted, lithographic, 1607  
multilithic, blueprinted, photostatic, or other productions or 1608  
reproductions of written or graphic matter; 1609

(g) To use the thing transferred, as described in section 1610  
5739.011 of the Revised Code, primarily in a manufacturing 1611  
operation to produce tangible personal property for sale; 1612

(h) To use the benefit of a warranty, maintenance or 1613  
service contract, or similar agreement, as described in division 1614  
(B)(7) of section 5739.01 of the Revised Code, to repair or 1615  
maintain tangible personal property, if all of the property that 1616  
is the subject of the warranty, contract, or agreement would not 1617  
be subject to the tax imposed by this section; 1618

(i) To use the thing transferred as qualified research and 1619  
development equipment; 1620

(j) To use or consume the thing transferred primarily in 1621  
storing, transporting, mailing, or otherwise handling purchased 1622  
sales inventory in a warehouse, distribution center, or similar 1623  
facility when the inventory is primarily distributed outside 1624  
this state to retail stores of the person who owns or controls 1625  
the warehouse, distribution center, or similar facility, to 1626  
retail stores of an affiliated group of which that person is a 1627  
member, or by means of direct marketing. This division does not 1628  
apply to motor vehicles registered for operation on the public 1629  
highways. As used in this division, "affiliated group" has the 1630

same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.

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

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

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

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

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

(p) To provide the thing transferred to the owner or 1660  
lessee of a motor vehicle that is being repaired or serviced, if 1661  
the thing transferred is a rented motor vehicle and the 1662  
purchaser is reimbursed for the cost of the rented motor vehicle 1663  
by a manufacturer, warrantor, or provider of a maintenance, 1664  
service, or other similar contract or agreement, with respect to 1665  
the motor vehicle that is being repaired or serviced. 1666

As used in division (B) (42) of this section, "thing" 1667  
includes all transactions included in divisions (B) (3) (a), (b), 1668  
and (e) of section 5739.01 of the Revised Code. 1669

(43) Sales conducted through a coin operated device that 1670  
activates vacuum equipment or equipment that dispenses water, 1671  
whether or not in combination with soap or other cleaning agents 1672  
or wax, to the consumer for the consumer's use on the premises 1673  
in washing, cleaning, or waxing a motor vehicle, provided no 1674  
other personal property or personal service is provided as part 1675  
of the transaction. 1676

(44) Sales of replacement and modification parts for 1677  
engines, airframes, instruments, and interiors in, and paint 1678  
for, aircraft used primarily in a fractional aircraft ownership 1679  
program, and sales of services for the repair, modification, and 1680  
maintenance of such aircraft, and machinery, equipment, and 1681  
supplies primarily used to provide those services. 1682

(45) Sales of telecommunications service that is used 1683  
directly and primarily to perform the functions of a call 1684  
center. As used in this division, "call center" means any 1685  
physical location where telephone calls are placed or received 1686  
in high volume for the purpose of making sales, marketing, 1687  
customer service, technical support, or other specialized 1688  
business activity, and that employs at least fifty individuals 1689

that engage in call center activities on a full-time basis, or 1690  
sufficient individuals to fill fifty full-time equivalent 1691  
positions. 1692

(46) Sales by a telecommunications service vendor of 900 1693  
service to a subscriber. This division does not apply to 1694  
information services, as defined in division (FF) of section 1695  
5739.01 of the Revised Code. 1696

(47) Sales of value-added non-voice data service. This 1697  
division does not apply to any similar service that is not 1698  
otherwise a telecommunications service. 1699

(48) (a) Sales of machinery, equipment, and software to a 1700  
qualified direct selling entity for use in a warehouse or 1701  
distribution center primarily for storing, transporting, or 1702  
otherwise handling inventory that is held for sale to 1703  
independent salespersons who operate as direct sellers and that 1704  
is held primarily for distribution outside this state; 1705

(b) As used in division (B) (48) (a) of this section: 1706

(i) "Direct seller" means a person selling consumer 1707  
products to individuals for personal or household use and not 1708  
from a fixed retail location, including selling such product at 1709  
in-home product demonstrations, parties, and other one-on-one 1710  
selling. 1711

(ii) "Qualified direct selling entity" means an entity 1712  
selling to direct sellers at the time the entity enters into a 1713  
tax credit agreement with the tax credit authority pursuant to 1714  
section 122.17 of the Revised Code, provided that the agreement 1715  
was entered into on or after January 1, 2007. Neither 1716  
contingencies relevant to the granting of, nor later 1717  
developments with respect to, the tax credit shall impair the 1718

status of the qualified direct selling entity under division (B) 1719  
(48) of this section after execution of the tax credit agreement 1720  
by the tax credit authority. 1721

(c) Division (B) (48) of this section is limited to 1722  
machinery, equipment, and software first stored, used, or 1723  
consumed in this state within the period commencing June 24, 1724  
2008, and ending on the date that is five years after that date. 1725

(49) Sales of materials, parts, equipment, or engines used 1726  
in the repair or maintenance of aircraft or avionics systems of 1727  
such aircraft, and sales of repair, remodeling, replacement, or 1728  
maintenance services in this state performed on aircraft or on 1729  
an aircraft's avionics, engine, or component materials or parts. 1730  
As used in division (B) (49) of this section, "aircraft" means 1731  
aircraft of more than six thousand pounds maximum certified 1732  
takeoff weight or used exclusively in general aviation. 1733

(50) Sales of full flight simulators that are used for 1734  
pilot or flight-crew training, sales of repair or replacement 1735  
parts or components, and sales of repair or maintenance services 1736  
for such full flight simulators. "Full flight simulator" means a 1737  
replica of a specific type, or make, model, and series of 1738  
aircraft cockpit. It includes the assemblage of equipment and 1739  
computer programs necessary to represent aircraft operations in 1740  
ground and flight conditions, a visual system providing an out- 1741  
of-the-cockpit view, and a system that provides cues at least 1742  
equivalent to those of a three-degree-of-freedom motion system, 1743  
and has the full range of capabilities of the systems installed 1744  
in the device as described in appendices A and B of part 60 of 1745  
chapter 1 of title 14 of the Code of Federal Regulations. 1746

(51) Any transfer or lease of tangible personal property 1747  
between the state and JobsOhio in accordance with section 1748

4313.02 of the Revised Code.	1749
(52) (a) Sales to a qualifying corporation.	1750
(b) As used in division (B) (52) of this section:	1751
(i) "Qualifying corporation" means a nonprofit corporation	1752
organized in this state that leases from an eligible county	1753
land, buildings, structures, fixtures, and improvements to the	1754
land that are part of or used in a public recreational facility	1755
used by a major league professional athletic team or a class A	1756
to class AAA minor league affiliate of a major league	1757
professional athletic team for a significant portion of the	1758
team's home schedule, provided the following apply:	1759
(I) The facility is leased from the eligible county	1760
pursuant to a lease that requires substantially all of the	1761
revenue from the operation of the business or activity conducted	1762
by the nonprofit corporation at the facility in excess of	1763
operating costs, capital expenditures, and reserves to be paid	1764
to the eligible county at least once per calendar year.	1765
(II) Upon dissolution and liquidation of the nonprofit	1766
corporation, all of its net assets are distributable to the	1767
board of commissioners of the eligible county from which the	1768
corporation leases the facility.	1769
(ii) "Eligible county" has the same meaning as in section	1770
307.695 of the Revised Code.	1771
(53) Sales to or by a cable service provider, video	1772
service provider, or radio or television broadcast station	1773
regulated by the federal government of cable service or	1774
programming, video service or programming, audio service or	1775
programming, or electronically transferred digital audiovisual	1776
or audio work. As used in division (B) (53) of this section,	1777

"cable service" and "cable service provider" have the same 1778  
meanings as in section 1332.01 of the Revised Code, and "video 1779  
service," "video service provider," and "video programming" have 1780  
the same meanings as in section 1332.21 of the Revised Code. 1781

(C) For the purpose of the proper administration of this 1782  
chapter, and to prevent the evasion of the tax, it is presumed 1783  
that all sales made in this state are subject to the tax until 1784  
the contrary is established. 1785

(D) The levy of this tax on retail sales of recreation and 1786  
sports club service shall not prevent a municipal corporation 1787  
from levying any tax on recreation and sports club dues or on 1788  
any income generated by recreation and sports club dues. 1789

(E) The tax collected by the vendor from the consumer 1790  
under this chapter is not part of the price, but is a tax 1791  
collection for the benefit of the state, and of counties levying 1792  
an additional sales tax pursuant to section 5739.021 or 5739.026 1793  
of the Revised Code and of transit authorities levying an 1794  
additional sales tax pursuant to section 5739.023 of the Revised 1795  
Code. Except for the discount authorized under section 5739.12 1796  
of the Revised Code and the effects of any rounding pursuant to 1797  
section 5703.055 of the Revised Code, no person other than the 1798  
state or such a county or transit authority shall derive any 1799  
benefit from the collection or payment of the tax levied by this 1800  
section or section 5739.021, 5739.023, or 5739.026 of the 1801  
Revised Code. 1802

**Section 2.** That existing sections 5739.01 and 5739.02 of 1803  
the Revised Code are hereby repealed. 1804

**Section 3.** The amendment by this act of sections 5739.01 1805  
and 5739.02 of the Revised Code is intended to be remedial in 1806

nature and shall apply to all sales made before, on, or after  
the effective date of this act.

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