

As Introduced

131st General Assembly

Regular Session

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H. B. No. 390

Representatives Schaffer, Retherford

Cosponsor: Representative Amstutz

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 provided;	74 75
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	76 77
(q) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair.	78 79 80 81 82 83 84 85 86
(r) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102;	87 88 89 90 91 92 93 94
(s) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle.	95 96 97 98
(t) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that	99 100 101 102

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

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

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

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

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

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

(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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