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Representative Merrin

Cosponsors: Representatives Hambley, McColley, Becker, Roegner, Seitz, Carfagna, Hood, Brinkman, Riedel, Goodman, Sheehy, Keller, Antani, Vitale, Zeltwanger, Koehler, Dean, Boccieri, Stein, Retherford, Young, Householder

A BILL

To amend sections 5739.01 and 5739.02 of the 1
Revised Code to exempt prescription eyeglasses, 2
contact lenses, and other optical aids sold by 3
licensed dispensers from sales and 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 132
tile, or flexible or rigid perforated plastic pipe or tubing, 133
incorporated or to be incorporated into a subsurface drainage 134
system appurtenant to land used or to be used primarily in 135
production by farming, agriculture, horticulture, or 136
floriculture. The term does not include such materials when they 137
are or are to be incorporated into a drainage system appurtenant 138
to a building or structure even if the building or structure is 139
used or to be used in such production. 140

(b) "Portable grain bin" means a structure that is used or 141
to be used by a person engaged in farming or agriculture to 142
shelter the person's grain and that is designed to be 143
disassembled without significant damage to its component parts. 144

(6) All transactions in which all of the shares of stock 145
of a closely held corporation are transferred, or an ownership 146
interest in a pass-through entity, as defined in section 5733.04 147
of the Revised Code, is transferred, if the corporation or pass- 148
through entity is not engaging in business and its entire assets 149
consist of boats, planes, motor vehicles, or other tangible 150
personal property operated primarily for the use and enjoyment 151
of the shareholders or owners; 152

(7) All transactions in which a warranty, maintenance or 153
service contract, or similar agreement by which the vendor of 154
the warranty, contract, or agreement agrees to repair or 155
maintain the tangible personal property of the consumer is or is 156
to be provided; 157

(8) The transfer of copyrighted motion picture films used 158
solely for advertising purposes, except that the transfer of 159
such films for exhibition purposes is not a sale; 160

(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 provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B) (3) (f) or (i) of this section is charged, or to whom the admission is granted.

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

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

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

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
(k) Providing digital advertising services.	566
The services listed in divisions (Y) (2) (a) to (k) of this section are not automatic data processing or computer services.	567 568
(Z) "Highway transportation for hire" means the	569

transportation of personal property belonging to others for 570
consideration by any of the following: 571

(1) The holder of a permit or certificate issued by this 572
state or the United States authorizing the holder to engage in 573
transportation of personal property belonging to others for 574
consideration over or on highways, roadways, streets, or any 575
similar public thoroughfare; 576

(2) A person who engages in the transportation of personal 577
property belonging to others for consideration over or on 578
highways, roadways, streets, or any similar public thoroughfare 579
but who could not have engaged in such transportation on 580
December 11, 1985, unless the person was the holder of a permit 581
or certificate of the types described in division (Z)(1) of this 582
section; 583

(3) A person who leases a motor vehicle to and operates it 584
for a person described by division (Z)(1) or (2) of this 585
section. 586

(AA) (1) "Telecommunications service" means the electronic 587
transmission, conveyance, or routing of voice, data, audio, 588
video, or any other information or signals to a point, or 589
between or among points. "Telecommunications service" includes 590
such transmission, conveyance, or routing in which computer 591
processing applications are used to act on the form, code, or 592
protocol of the content for purposes of transmission, 593
conveyance, or routing without regard to whether the service is 594
referred to as voice-over internet protocol service or is 595
classified by the federal communications commission as enhanced 596
or value-added. "Telecommunications service" does not include 597
any of the following: 598

(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 the processed data or information;	599 600 601 602 603
(b) Installation or maintenance of wiring or equipment on a customer's premises;	604 605
(c) Tangible personal property;	606
(d) Advertising, including directory advertising;	607
(e) Billing and collection services provided to third parties;	608 609
(f) Internet access service;	610
(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3;	611 612 613 614 615 616 617 618
(h) Ancillary service;	619
(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.	620 621
(2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this	622 623 624 625 626

division: 627

(a) "Conference bridging service" means an ancillary 628
service that links two or more participants of an audio or video 629
conference call, including providing a telephone number. 630
"Conference bridging service" does not include 631
telecommunications services used to reach the conference bridge. 632

(b) "Detailed telecommunications billing service" means an 633
ancillary service of separately stating information pertaining 634
to individual calls on a customer's billing statement. 635

(c) "Directory assistance" means an ancillary service of 636
providing telephone number or address information. 637

(d) "Vertical service" means an ancillary service that is 638
offered in connection with one or more telecommunications 639
services, which offers advanced calling features that allow 640
customers to identify callers and manage multiple calls and call 641
connections, including conference bridging service. 642

(e) "Voice mail service" means an ancillary service that 643
enables the customer to store, send, or receive recorded 644
messages. "Voice mail service" does not include any vertical 645
services that the customer may be required to have in order to 646
utilize the voice mail service. 647

(3) "900 service" means an inbound toll telecommunications 648
service purchased by a subscriber that allows the subscriber's 649
customers to call in to the subscriber's prerecorded 650
announcement or live service, and which is typically marketed 651
under the name "900 service" and any subsequent numbers 652
designated by the federal communications commission. "900 653
service" does not include the charge for collection services 654
provided by the seller of the telecommunications service to the 655

subscriber, or services or products sold by the subscriber to 656
the subscriber's customer. 657

(4) "Prepaid calling service" means the right to access 658
exclusively telecommunications services, which must be paid for 659
in advance and which enables the origination of calls using an 660
access number or authorization code, whether manually or 661
electronically dialed, and that is sold in predetermined units 662
or dollars of which the number declines with use in a known 663
amount. 664

(5) "Prepaid wireless calling service" means a 665
telecommunications service that provides the right to utilize 666
mobile telecommunications service as well as other non- 667
telecommunications services, including the download of digital 668
products delivered electronically, and content and ancillary 669
services, that must be paid for in advance and that is sold in 670
predetermined units or dollars of which the number declines with 671
use in a known amount. 672

(6) "Value-added non-voice data service" means a 673
telecommunications service in which computer processing 674
applications are used to act on the form, content, code, or 675
protocol of the information or data primarily for a purpose 676
other than transmission, conveyance, or routing. 677

(7) "Coin-operated telephone service" means a 678
telecommunications service paid for by inserting money into a 679
telephone accepting direct deposits of money to operate. 680

(8) "Customer" has the same meaning as in section 5739.034 681
of the Revised Code. 682

(BB) "Laundry and dry cleaning services" means removing 683
soil or dirt from towels, linens, articles of clothing, or other 684

fabric items that belong to others and supplying towels, linens, 685
articles of clothing, or other fabric items. "Laundry and dry 686
cleaning services" does not include the provision of self- 687
service facilities for use by consumers to remove soil or dirt 688
from towels, linens, articles of clothing, or other fabric 689
items. 690

(CC) "Magazines distributed as controlled circulation 691
publications" means magazines containing at least twenty-four 692
pages, at least twenty-five per cent editorial content, issued 693
at regular intervals four or more times a year, and circulated 694
without charge to the recipient, provided that such magazines 695
are not owned or controlled by individuals or business concerns 696
which conduct such publications as an auxiliary to, and 697
essentially for the advancement of the main business or calling 698
of, those who own or control them. 699

(DD) "Landscaping and lawn care service" means the 700
services of planting, seeding, sodding, removing, cutting, 701
trimming, pruning, mulching, aerating, applying chemicals, 702
watering, fertilizing, and providing similar services to 703
establish, promote, or control the growth of trees, shrubs, 704
flowers, grass, ground cover, and other flora, or otherwise 705
maintaining a lawn or landscape grown or maintained by the owner 706
for ornamentation or other nonagricultural purpose. However, 707
"landscaping and lawn care service" does not include the 708
providing of such services by a person who has less than five 709
thousand dollars in sales of such services during the calendar 710
year. 711

(EE) "Private investigation and security service" means 712
the performance of any activity for which the provider of such 713
service is required to be licensed pursuant to Chapter 4749. of 714

the Revised Code, or would be required to be so licensed in 715
performing such services in this state, and also includes the 716
services of conducting polygraph examinations and of monitoring 717
or overseeing the activities on or in, or the condition of, the 718
consumer's home, business, or other facility by means of 719
electronic or similar monitoring devices. "Private investigation 720
and security service" does not include special duty services 721
provided by off-duty police officers, deputy sheriffs, and other 722
peace officers regularly employed by the state or a political 723
subdivision. 724

(FF) "Information services" means providing conversation, 725
giving consultation or advice, playing or making a voice or 726
other recording, making or keeping a record of the number of 727
callers, and any other service provided to a consumer by means 728
of a nine hundred telephone call, except when the nine hundred 729
telephone call is the means by which the consumer makes a 730
contribution to a recognized charity. 731

(GG) "Research and development" means designing, creating, 732
or formulating new or enhanced products, equipment, or 733
manufacturing processes, and also means conducting scientific or 734
technological inquiry and experimentation in the physical 735
sciences with the goal of increasing scientific knowledge which 736
may reveal the bases for new or enhanced products, equipment, or 737
manufacturing processes. 738

(HH) "Qualified research and development equipment" means 739
capitalized tangible personal property, and leased personal 740
property that would be capitalized if purchased, used by a 741
person primarily to perform research and development. Tangible 742
personal property primarily used in testing, as defined in 743
division (A) (4) of section 5739.011 of the Revised Code, or used 744

for recording or storing test results, is not qualified research 745
and development equipment unless such property is primarily used 746
by the consumer in testing the product, equipment, or 747
manufacturing process being created, designed, or formulated by 748
the consumer in the research and development activity or in 749
recording or storing such test results. 750

(II) "Building maintenance and janitorial service" means 751
cleaning the interior or exterior of a building and any tangible 752
personal property located therein or thereon, including any 753
services incidental to such cleaning for which no separate 754
charge is made. However, "building maintenance and janitorial 755
service" does not include the providing of such service by a 756
person who has less than five thousand dollars in sales of such 757
service during the calendar year. As used in this division, 758
"cleaning" does not include sanitation services necessary for an 759
establishment described in 21 U.S.C. 608 to comply with rules 760
and regulations adopted pursuant to that section. 761

(JJ) "Employment service" means providing or supplying 762
personnel, on a temporary or long-term basis, to perform work or 763
labor under the supervision or control of another, when the 764
personnel so provided or supplied receive their wages, salary, 765
or other compensation from the provider or supplier of the 766
employment service or from a third party that provided or 767
supplied the personnel to the provider or supplier. "Employment 768
service" does not include: 769

(1) Acting as a contractor or subcontractor, where the 770
personnel performing the work are not under the direct control 771
of the purchaser. 772

(2) Medical and health care services. 773

(3) Supplying personnel to a purchaser pursuant to a 774
contract of at least one year between the service provider and 775
the purchaser that specifies that each employee covered under 776
the contract is assigned to the purchaser on a permanent basis. 777

(4) Transactions between members of an affiliated group, 778
as defined in division (B) (3) (e) of this section. 779

(5) Transactions where the personnel so provided or 780
supplied by a provider or supplier to a purchaser of an 781
employment service are then provided or supplied by that 782
purchaser to a third party as an employment service, except 783
"employment service" does include the transaction between that 784
purchaser and the third party. 785

(KK) "Employment placement service" means locating or 786
finding employment for a person or finding or locating an 787
employee to fill an available position. 788

(LL) "Exterminating service" means eradicating or 789
attempting to eradicate vermin infestations from a building or 790
structure, or the area surrounding a building or structure, and 791
includes activities to inspect, detect, or prevent vermin 792
infestation of a building or structure. 793

(MM) "Physical fitness facility service" means all 794
transactions by which a membership is granted, maintained, or 795
renewed, including initiation fees, membership dues, renewal 796
fees, monthly minimum fees, and other similar fees and dues, by 797
a physical fitness facility such as an athletic club, health 798
spa, or gymnasium, which entitles the member to use the facility 799
for physical exercise. 800

(NN) "Recreation and sports club service" means all 801
transactions by which a membership is granted, maintained, or 802

renewed, including initiation fees, membership dues, renewal 803
fees, monthly minimum fees, and other similar fees and dues, by 804
a recreation and sports club, which entitles the member to use 805
the facilities of the organization. "Recreation and sports club" 806
means an organization that has ownership of, or controls or 807
leases on a continuing, long-term basis, the facilities used by 808
its members and includes an aviation club, gun or shooting club, 809
yacht club, card club, swimming club, tennis club, golf club, 810
country club, riding club, amateur sports club, or similar 811
organization. 812

(OO) "Livestock" means farm animals commonly raised for 813
food, food production, or other agricultural purposes, 814
including, but not limited to, cattle, sheep, goats, swine, 815
poultry, and captive deer. "Livestock" does not include 816
invertebrates, amphibians, reptiles, domestic pets, animals for 817
use in laboratories or for exhibition, or other animals not 818
commonly raised for food or food production. 819

(PP) "Livestock structure" means a building or structure 820
used exclusively for the housing, raising, feeding, or 821
sheltering of livestock, and includes feed storage or handling 822
structures and structures for livestock waste handling. 823

(QQ) "Horticulture" means the growing, cultivation, and 824
production of flowers, fruits, herbs, vegetables, sod, 825
mushrooms, and nursery stock. As used in this division, "nursery 826
stock" has the same meaning as in section 927.51 of the Revised 827
Code. 828

(RR) "Horticulture structure" means a building or 829
structure used exclusively for the commercial growing, raising, 830
or overwintering of horticultural products, and includes the 831
area used for stocking, storing, and packing horticultural 832

products when done in conjunction with the production of those 833
products. 834

(SS) "Newspaper" means an unbound publication bearing a 835
title or name that is regularly published, at least as 836
frequently as biweekly, and distributed from a fixed place of 837
business to the public in a specific geographic area, and that 838
contains a substantial amount of news matter of international, 839
national, or local events of interest to the general public. 840

(TT) "Professional racing team" means a person that 841
employs at least twenty full-time employees for the purpose of 842
conducting a motor vehicle racing business for profit. The 843
person must conduct the business with the purpose of racing one 844
or more motor racing vehicles in at least ten competitive 845
professional racing events each year that comprise all or part 846
of a motor racing series sanctioned by one or more motor racing 847
sanctioning organizations. A "motor racing vehicle" means a 848
vehicle for which the chassis, engine, and parts are designed 849
exclusively for motor racing, and does not include a stock or 850
production model vehicle that may be modified for use in racing. 851
For the purposes of this division: 852

(1) A "competitive professional racing event" is a motor 853
vehicle racing event sanctioned by one or more motor racing 854
sanctioning organizations, at which aggregate cash prizes in 855
excess of eight hundred thousand dollars are awarded to the 856
competitors. 857

(2) "Full-time employee" means an individual who is 858
employed for consideration for thirty-five or more hours a week, 859
or who renders any other standard of service generally accepted 860
by custom or specified by contract as full-time employment. 861

(UU) (1) "Lease" or "rental" means any transfer of the 862
possession or control of tangible personal property for a fixed 863
or indefinite term, for consideration. "Lease" or "rental" 864
includes future options to purchase or extend, and agreements 865
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 866
trailers where the amount of consideration may be increased or 867
decreased by reference to the amount realized upon the sale or 868
disposition of the property. "Lease" or "rental" does not 869
include: 870

(a) A transfer of possession or control of tangible 871
personal property under a security agreement or a deferred 872
payment plan that requires the transfer of title upon completion 873
of the required payments; 874

(b) A transfer of possession or control of tangible 875
personal property under an agreement that requires the transfer 876
of title upon completion of required payments and payment of an 877
option price that does not exceed the greater of one hundred 878
dollars or one per cent of the total required payments; 879

(c) Providing tangible personal property along with an 880
operator for a fixed or indefinite period of time, if the 881
operator is necessary for the property to perform as designed. 882
For purposes of this division, the operator must do more than 883
maintain, inspect, or set up the tangible personal property. 884

(2) "Lease" and "rental," as defined in division (UU) of 885
this section, shall not apply to leases or rentals that exist 886
before June 26, 2003. 887

(3) "Lease" and "rental" have the same meaning as in 888
division (UU) (1) of this section regardless of whether a 889
transaction is characterized as a lease or rental under 890

generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws. 891
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(VV) "Mobile telecommunications service" has the same meaning as in the "Mobile Telecommunications Sourcing Act," Pub. L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as amended, and, on and after August 1, 2003, includes related fees and ancillary services, including universal service fees, detailed billing service, directory assistance, service initiation, voice mail service, and vertical services, such as caller ID and three-way calling. 894
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(WW) "Certified service provider" has the same meaning as in section 5740.01 of the Revised Code. 902
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(XX) "Satellite broadcasting service" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's receiving equipment without the use of ground receiving or distribution equipment, except the subscriber's receiving equipment or equipment used in the uplink process to the satellite, and includes all service and rental charges, premium channels or other special services, installation and repair service charges, and any other charges having any connection with the provision of the satellite broadcasting service. 904
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(YY) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. For purposes of this chapter and Chapter 5741. of the Revised Code, "tangible personal property" includes motor vehicles, electricity, water, gas, steam, and prewritten computer software. 914
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(ZZ) "Direct mail" means printed material delivered or 920
distributed by United States mail or other delivery service to a 921
mass audience or to addressees on a mailing list provided by the 922
consumer or at the direction of the consumer when the cost of 923
the items are not billed directly to the recipients. "Direct 924
mail" includes tangible personal property supplied directly or 925
indirectly by the consumer to the direct mail vendor for 926
inclusion in the package containing the printed material. 927
"Direct mail" does not include multiple items of printed 928
material delivered to a single address. 929

(AAA) "Computer" means an electronic device that accepts 930
information in digital or similar form and manipulates it for a 931
result based on a sequence of instructions. 932

(BBB) "Computer software" means a set of coded 933
instructions designed to cause a computer or automatic data 934
processing equipment to perform a task. 935

(CCC) "Delivered electronically" means delivery of 936
computer software from the seller to the purchaser by means 937
other than tangible storage media. 938

(DDD) "Prewritten computer software" means computer 939
software, including prewritten upgrades, that is not designed 940
and developed by the author or other creator to the 941
specifications of a specific purchaser. The combining of two or 942
more prewritten computer software programs or prewritten 943
portions thereof does not cause the combination to be other than 944
prewritten computer software. "Prewritten computer software" 945
includes software designed and developed by the author or other 946
creator to the specifications of a specific purchaser when it is 947
sold to a person other than the purchaser. If a person modifies 948
or enhances computer software of which the person is not the 949

author or creator, the person shall be deemed to be the author 950
or creator only of such person's modifications or enhancements. 951
Prewritten computer software or a prewritten portion thereof 952
that is modified or enhanced to any degree, where such 953
modification or enhancement is designed and developed to the 954
specifications of a specific purchaser, remains prewritten 955
computer software; provided, however, that where there is a 956
reasonable, separately stated charge or an invoice or other 957
statement of the price given to the purchaser for the 958
modification or enhancement, the modification or enhancement 959
shall not constitute prewritten computer software. 960

(EEE) (1) "Food" means substances, whether in liquid, 961
concentrated, solid, frozen, dried, or dehydrated form, that are 962
sold for ingestion or chewing by humans and are consumed for 963
their taste or nutritional value. "Food" does not include 964
alcoholic beverages, dietary supplements, soft drinks, or 965
tobacco. 966

(2) As used in division (EEE) (1) of this section: 967

(a) "Alcoholic beverages" means beverages that are 968
suitable for human consumption and contain one-half of one per 969
cent or more of alcohol by volume. 970

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

ingredients:	980
(i) A vitamin;	981
(ii) A mineral;	982
(iii) An herb or other botanical;	983
(iv) An amino acid;	984
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	985 986
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section.	987 988 989
(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.	990 991 992 993 994
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	995 996
(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.	997 998 999 1000 1001 1002 1003 1004 1005
(GGG) "Prescription" means an order, formula, or recipe	1006

issued in any form of oral, written, electronic, or other means 1007
of transmission by a duly licensed practitioner authorized by 1008
the laws of this state to issue a prescription. 1009

(HHH) "Durable medical equipment" means equipment, 1010
including repair and replacement parts for such equipment, that 1011
can withstand repeated use, is primarily and customarily used to 1012
serve a medical purpose, generally is not useful to a person in 1013
the absence of illness or injury, and is not worn in or on the 1014
body. "Durable medical equipment" does not include mobility 1015
enhancing equipment. 1016

(III) "Mobility enhancing equipment" means equipment, 1017
including repair and replacement parts for such equipment, that 1018
is primarily and customarily used to provide or increase the 1019
ability to move from one place to another and is appropriate for 1020
use either in a home or a motor vehicle, that is not generally 1021
used by persons with normal mobility, and that does not include 1022
any motor vehicle or equipment on a motor vehicle normally 1023
provided by a motor vehicle manufacturer. "Mobility enhancing 1024
equipment" does not include durable medical equipment. 1025

(JJJ) "Prosthetic device" means a replacement, corrective, 1026
or supportive device, including repair and replacement parts for 1027
the device, worn on or in the human body to artificially replace 1028
a missing portion of the body, prevent or correct physical 1029
deformity or malfunction, or support a weak or deformed portion 1030
of the body. As used in this division, "prosthetic device" does 1031
not include corrective eyeglasses, contact lenses, or dental 1032
prosthesis. 1033

(KKK) (1) "Fractional aircraft ownership program" means a 1034
program in which persons within an affiliated group sell and 1035
manage fractional ownership program aircraft, provided that at 1036

least one hundred airworthy aircraft are operated in the program 1037
and the program meets all of the following criteria: 1038

(a) Management services are provided by at least one 1039
program manager within an affiliated group on behalf of the 1040
fractional owners. 1041

(b) Each program aircraft is owned or possessed by at 1042
least one fractional owner. 1043

(c) Each fractional owner owns or possesses at least a 1044
one-sixteenth interest in at least one fixed-wing program 1045
aircraft. 1046

(d) A dry-lease aircraft interchange arrangement is in 1047
effect among all of the fractional owners. 1048

(e) Multi-year program agreements are in effect regarding 1049
the fractional ownership, management services, and dry-lease 1050
aircraft interchange arrangement aspects of the program. 1051

(2) As used in division (KKK)(1) of this section: 1052

(a) "Affiliated group" has the same meaning as in division 1053
(B)(3)(e) of this section. 1054

(b) "Fractional owner" means a person that owns or 1055
possesses at least a one-sixteenth interest in a program 1056
aircraft and has entered into the agreements described in 1057
division (KKK)(1)(e) of this section. 1058

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

aircraft ownership program. 1065

(d) "Management services" means administrative and 1066
aviation support services furnished under a fractional aircraft 1067
ownership program in accordance with a management services 1068
agreement under division (KKK) (1) (e) of this section, and 1069
offered by the program manager to the fractional owners, 1070
including, at a minimum, the establishment and implementation of 1071
safety guidelines; the coordination of the scheduling of the 1072
program aircraft and crews; program aircraft maintenance; 1073
program aircraft insurance; crew training for crews employed, 1074
furnished, or contracted by the program manager or the 1075
fractional owner; the satisfaction of record-keeping 1076
requirements; and the development and use of an operations 1077
manual and a maintenance manual for the fractional aircraft 1078
ownership program. 1079

(e) "Program manager" means the person that offers 1080
management services to fractional owners pursuant to a 1081
management services agreement under division (KKK) (1) (e) of this 1082
section. 1083

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

electronic format. Providing electronic publishing includes the 1095
functions necessary for the acquisition, formatting, editing, 1096
storage, and dissemination of data or information that is the 1097
subject of a sale. 1098

(MMM) "Medicaid health insuring corporation" means a 1099
health insuring corporation that holds a certificate of 1100
authority under Chapter 1751. of the Revised Code and is under 1101
contract with the department of ~~job and family services~~ medicaid 1102
pursuant to section ~~5111.17~~ 5167.10 of the Revised Code. 1103

(NNN) "Managed care premium" means any premium, 1104
capitation, or other payment a medicaid health insuring 1105
corporation receives for providing or arranging for the 1106
provision of health care services to its members or enrollees 1107
residing in this state. 1108

(OOO) "Captive deer" means deer and other cervidae that 1109
have been legally acquired, or their offspring, that are 1110
privately owned for agricultural or farming purposes. 1111

(PPP) "Gift card" means a document, card, certificate, or 1112
other record, whether tangible or intangible, that may be 1113
redeemed by a consumer for a dollar value when making a purchase 1114
of tangible personal property or services. 1115

(QQQ) "Specified digital product" means an electronically 1116
transferred digital audiovisual work, digital audio work, or 1117
digital book. 1118

As used in division (QQQ) of this section: 1119

(1) "Digital audiovisual work" means a series of related 1120
images that, when shown in succession, impart an impression of 1121
motion, together with accompanying sounds, if any. 1122

(2) "Digital audio work" means a work that results from 1123
the fixation of a series of musical, spoken, or other sounds, 1124
including digitized sound files that are downloaded onto a 1125
device and that may be used to alert the customer with respect 1126
to a communication. 1127

(3) "Digital book" means a work that is generally 1128
recognized in the ordinary and usual sense as a book. 1129

(4) "Electronically transferred" means obtained by the 1130
purchaser by means other than tangible storage media. 1131

(RRR) "Digital advertising services" means providing 1132
access, by means of telecommunications equipment, to computer 1133
equipment that is used to enter, upload, download, review, 1134
manipulate, store, add, or delete data for the purpose of 1135
electronically displaying, delivering, placing, or transferring 1136
promotional advertisements to potential customers about products 1137
or services or about industry or business brands. 1138

(SSS) "Municipal gas utility" means a municipal 1139
corporation that owns or operates a system for the distribution 1140
of natural gas. 1141

Sec. 5739.02. For the purpose of providing revenue with 1142
which to meet the needs of the state, for the use of the general 1143
revenue fund of the state, for the purpose of securing a 1144
thorough and efficient system of common schools throughout the 1145
state, for the purpose of affording revenues, in addition to 1146
those from general property taxes, permitted under 1147
constitutional limitations, and from other sources, for the 1148
support of local governmental functions, and for the purpose of 1149
reimbursing the state for the expense of administering this 1150
chapter, an excise tax is hereby levied on each retail sale made 1151

in this state. 1152

(A) (1) The tax shall be collected as provided in section 1153
5739.025 of the Revised Code. The rate of the tax shall be five 1154
and three-fourths per cent. The tax applies and is collectible 1155
when the sale is made, regardless of the time when the price is 1156
paid or delivered. 1157

(2) In the case of the lease or rental, with a fixed term 1158
of more than thirty days or an indefinite term with a minimum 1159
period of more than thirty days, of any motor vehicles designed 1160
by the manufacturer to carry a load of not more than one ton, 1161
watercraft, outboard motor, or aircraft, or of any tangible 1162
personal property, other than motor vehicles designed by the 1163
manufacturer to carry a load of more than one ton, to be used by 1164
the lessee or renter primarily for business purposes, the tax 1165
shall be collected by the vendor at the time the lease or rental 1166
is consummated and shall be calculated by the vendor on the 1167
basis of the total amount to be paid by the lessee or renter 1168
under the lease agreement. If the total amount of the 1169
consideration for the lease or rental includes amounts that are 1170
not calculated at the time the lease or rental is executed, the 1171
tax shall be calculated and collected by the vendor at the time 1172
such amounts are billed to the lessee or renter. In the case of 1173
an open-end lease or rental, the tax shall be calculated by the 1174
vendor on the basis of the total amount to be paid during the 1175
initial fixed term of the lease or rental, and for each 1176
subsequent renewal period as it comes due. As used in this 1177
division, "motor vehicle" has the same meaning as in section 1178
4501.01 of the Revised Code, and "watercraft" includes an 1179
outdrive unit attached to the watercraft. 1180

A lease with a renewal clause and a termination penalty or 1181

similar provision that applies if the renewal clause is not 1182
exercised is presumed to be a sham transaction. In such a case, 1183
the tax shall be calculated and paid on the basis of the entire 1184
length of the lease period, including any renewal periods, until 1185
the termination penalty or similar provision no longer applies. 1186
The taxpayer shall bear the burden, by a preponderance of the 1187
evidence, that the transaction or series of transactions is not 1188
a sham transaction. 1189

(3) Except as provided in division (A)(2) of this section, 1190
in the case of a sale, the price of which consists in whole or 1191
in part of the lease or rental of tangible personal property, 1192
the tax shall be measured by the installments of that lease or 1193
rental. 1194

(4) In the case of a sale of a physical fitness facility 1195
service or recreation and sports club service, the price of 1196
which consists in whole or in part of a membership for the 1197
receipt of the benefit of the service, the tax applicable to the 1198
sale shall be measured by the installments thereof. 1199

(B) The tax does not apply to the following: 1200

(1) Sales to the state or any of its political 1201
subdivisions, or to any other state or its political 1202
subdivisions if the laws of that state exempt from taxation 1203
sales made to this state and its political subdivisions; 1204

(2) Sales of food for human consumption off the premises 1205
where sold; 1206

(3) Sales of food sold to students only in a cafeteria, 1207
dormitory, fraternity, or sorority maintained in a private, 1208
public, or parochial school, college, or university; 1209

(4) Sales of newspapers and sales or transfers of 1210

magazines distributed as controlled circulation publications; 1211

(5) The furnishing, preparing, or serving of meals without 1212
charge by an employer to an employee provided the employer 1213
records the meals as part compensation for services performed or 1214
work done; 1215

(6) Sales of motor fuel upon receipt, use, distribution, 1216
or sale of which in this state a tax is imposed by the law of 1217
this state, but this exemption shall not apply to the sale of 1218
motor fuel on which a refund of the tax is allowable under 1219
division (A) of section 5735.14 of the Revised Code; and the tax 1220
commissioner may deduct the amount of tax levied by this section 1221
applicable to the price of motor fuel when granting a refund of 1222
motor fuel tax pursuant to division (A) of section 5735.14 of 1223
the Revised Code and shall cause the amount deducted to be paid 1224
into the general revenue fund of this state; 1225

(7) Sales of natural gas by a natural gas company or 1226
municipal gas utility, of water by a water-works company, or of 1227
steam by a heating company, if in each case the thing sold is 1228
delivered to consumers through pipes or conduits, and all sales 1229
of communications services by a telegraph company, all terms as 1230
defined in section 5727.01 of the Revised Code, and sales of 1231
electricity delivered through wires; 1232

(8) Casual sales by a person, or auctioneer employed 1233
directly by the person to conduct such sales, except as to such 1234
sales of motor vehicles, watercraft or outboard motors required 1235
to be titled under section 1548.06 of the Revised Code, 1236
watercraft documented with the United States coast guard, 1237
snowmobiles, and all-purpose vehicles as defined in section 1238
4519.01 of the Revised Code; 1239

(9) (a) Sales of services or tangible personal property, 1240
other than motor vehicles, mobile homes, and manufactured homes, 1241
by churches, organizations exempt from taxation under section 1242
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1243
organizations operated exclusively for charitable purposes as 1244
defined in division (B) (12) of this section, provided that the 1245
number of days on which such tangible personal property or 1246
services, other than items never subject to the tax, are sold 1247
does not exceed six in any calendar year, except as otherwise 1248
provided in division (B) (9) (b) of this section. If the number of 1249
days on which such sales are made exceeds six in any calendar 1250
year, the church or organization shall be considered to be 1251
engaged in business and all subsequent sales by it shall be 1252
subject to the tax. In counting the number of days, all sales by 1253
groups within a church or within an organization shall be 1254
considered to be sales of that church or organization. 1255

(b) The limitation on the number of days on which tax- 1256
exempt sales may be made by a church or organization under 1257
division (B) (9) (a) of this section does not apply to sales made 1258
by student clubs and other groups of students of a primary or 1259
secondary school, or a parent-teacher association, booster 1260
group, or similar organization that raises money to support or 1261
fund curricular or extracurricular activities of a primary or 1262
secondary school. 1263

(c) Divisions (B) (9) (a) and (b) of this section do not 1264
apply to sales by a noncommercial educational radio or 1265
television broadcasting station. 1266

(10) Sales not within the taxing power of this state under 1267
the Constitution or laws of the United States or the 1268
Constitution of this state; 1269

(11) Except for transactions that are sales under division 1270
(B) (3) (r) of section 5739.01 of the Revised Code, the 1271
transportation of persons or property, unless the transportation 1272
is by a private investigation and security service; 1273

(12) Sales of tangible personal property or services to 1274
churches, to organizations exempt from taxation under section 1275
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1276
nonprofit organizations operated exclusively for charitable 1277
purposes in this state, no part of the net income of which 1278
inures to the benefit of any private shareholder or individual, 1279
and no substantial part of the activities of which consists of 1280
carrying on propaganda or otherwise attempting to influence 1281
legislation; sales to offices administering one or more homes 1282
for the aged or one or more hospital facilities exempt under 1283
section 140.08 of the Revised Code; and sales to organizations 1284
described in division (D) of section 5709.12 of the Revised 1285
Code. 1286

"Charitable purposes" means the relief of poverty; the 1287
improvement of health through the alleviation of illness, 1288
disease, or injury; the operation of an organization exclusively 1289
for the provision of professional, laundry, printing, and 1290
purchasing services to hospitals or charitable institutions; the 1291
operation of a home for the aged, as defined in section 5701.13 1292
of the Revised Code; the operation of a radio or television 1293
broadcasting station that is licensed by the federal 1294
communications commission as a noncommercial educational radio 1295
or television station; the operation of a nonprofit animal 1296
adoption service or a county humane society; the promotion of 1297
education by an institution of learning that maintains a faculty 1298
of qualified instructors, teaches regular continuous courses of 1299
study, and confers a recognized diploma upon completion of a 1300

specific curriculum; the operation of a parent-teacher 1301
association, booster group, or similar organization primarily 1302
engaged in the promotion and support of the curricular or 1303
extracurricular activities of a primary or secondary school; the 1304
operation of a community or area center in which presentations 1305
in music, dramatics, the arts, and related fields are made in 1306
order to foster public interest and education therein; the 1307
production of performances in music, dramatics, and the arts; or 1308
the promotion of education by an organization engaged in 1309
carrying on research in, or the dissemination of, scientific and 1310
technological knowledge and information primarily for the 1311
public. 1312

Nothing in this division shall be deemed to exempt sales 1313
to any organization for use in the operation or carrying on of a 1314
trade or business, or sales to a home for the aged for use in 1315
the operation of independent living facilities as defined in 1316
division (A) of section 5709.12 of the Revised Code. 1317

(13) Building and construction materials and services sold 1318
to construction contractors for incorporation into a structure 1319
or improvement to real property under a construction contract 1320
with this state or a political subdivision of this state, or 1321
with the United States government or any of its agencies; 1322
building and construction materials and services sold to 1323
construction contractors for incorporation into a structure or 1324
improvement to real property that are accepted for ownership by 1325
this state or any of its political subdivisions, or by the 1326
United States government or any of its agencies at the time of 1327
completion of the structures or improvements; building and 1328
construction materials sold to construction contractors for 1329
incorporation into a horticulture structure or livestock 1330
structure for a person engaged in the business of horticulture 1331

or producing livestock; building materials and services sold to 1332
a construction contractor for incorporation into a house of 1333
public worship or religious education, or a building used 1334
exclusively for charitable purposes under a construction 1335
contract with an organization whose purpose is as described in 1336
division (B) (12) of this section; building materials and 1337
services sold to a construction contractor for incorporation 1338
into a building under a construction contract with an 1339
organization exempt from taxation under section 501(c) (3) of the 1340
Internal Revenue Code of 1986 when the building is to be used 1341
exclusively for the organization's exempt purposes; building and 1342
construction materials sold for incorporation into the original 1343
construction of a sports facility under section 307.696 of the 1344
Revised Code; building and construction materials and services 1345
sold to a construction contractor for incorporation into real 1346
property outside this state if such materials and services, when 1347
sold to a construction contractor in the state in which the real 1348
property is located for incorporation into real property in that 1349
state, would be exempt from a tax on sales levied by that state; 1350
building and construction materials for incorporation into a 1351
transportation facility pursuant to a public-private agreement 1352
entered into under sections 5501.70 to 5501.83 of the Revised 1353
Code; and, until one calendar year after the construction of a 1354
convention center that qualifies for property tax exemption 1355
under section 5709.084 of the Revised Code is completed, 1356
building and construction materials and services sold to a 1357
construction contractor for incorporation into the real property 1358
comprising that convention center; 1359

(14) Sales of ships or vessels or rail rolling stock used 1360
or to be used principally in interstate or foreign commerce, and 1361
repairs, alterations, fuel, and lubricants for such ships or 1362

vessels or rail rolling stock; 1363

(15) Sales to persons primarily engaged in any of the 1364
activities mentioned in division (B) (42) (a), (g), or (h) of this 1365
section, to persons engaged in making retail sales, or to 1366
persons who purchase for sale from a manufacturer tangible 1367
personal property that was produced by the manufacturer in 1368
accordance with specific designs provided by the purchaser, of 1369
packages, including material, labels, and parts for packages, 1370
and of machinery, equipment, and material for use primarily in 1371
packaging tangible personal property produced for sale, 1372
including any machinery, equipment, and supplies used to make 1373
labels or packages, to prepare packages or products for 1374
labeling, or to label packages or products, by or on the order 1375
of the person doing the packaging, or sold at retail. "Packages" 1376
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1377
bindings, wrappings, and other similar devices and containers, 1378
but does not include motor vehicles or bulk tanks, trailers, or 1379
similar devices attached to motor vehicles. "Packaging" means 1380
placing in a package. Division (B) (15) of this section does not 1381
apply to persons engaged in highway transportation for hire. 1382

(16) Sales of food to persons using supplemental nutrition 1383
assistance program benefits to purchase the food. As used in 1384
this division, "food" has the same meaning as in 7 U.S.C. 2012 1385
and federal regulations adopted pursuant to the Food and 1386
Nutrition Act of 2008. 1387

(17) Sales to persons engaged in farming, agriculture, 1388
horticulture, or floriculture, of tangible personal property for 1389
use or consumption primarily in the production by farming, 1390
agriculture, horticulture, or floriculture of other tangible 1391
personal property for use or consumption primarily in the 1392

production of tangible personal property for sale by farming, 1393
agriculture, horticulture, or floriculture; or material and 1394
parts for incorporation into any such tangible personal property 1395
for use or consumption in production; and of tangible personal 1396
property for such use or consumption in the conditioning or 1397
holding of products produced by and for such use, consumption, 1398
or sale by persons engaged in farming, agriculture, 1399
horticulture, or floriculture, except where such property is 1400
incorporated into real property; 1401

(18) Sales of drugs for a human being that may be 1402
dispensed only pursuant to a prescription; insulin as recognized 1403
in the official United States pharmacopoeia; urine and blood 1404
testing materials when used by diabetics or persons with 1405
hypoglycemia to test for glucose or acetone; hypodermic syringes 1406
and needles when used by diabetics for insulin injections; 1407
epoetin alfa when purchased for use in the treatment of persons 1408
with medical disease; hospital beds when purchased by hospitals, 1409
nursing homes, or other medical facilities; and medical oxygen 1410
and medical oxygen-dispensing equipment when purchased by 1411
hospitals, nursing homes, or other medical facilities; 1412

(19) Sales of prosthetic devices, durable medical 1413
equipment for home use, or mobility enhancing equipment, when 1414
made pursuant to a prescription and when such devices or 1415
equipment are for use by a human being. 1416

(20) Sales of emergency and fire protection vehicles and 1417
equipment to nonprofit organizations for use solely in providing 1418
fire protection and emergency services, including trauma care 1419
and emergency medical services, for political subdivisions of 1420
the state; 1421

(21) Sales of tangible personal property manufactured in 1422

this state, if sold by the manufacturer in this state to a 1423
retailer for use in the retail business of the retailer outside 1424
of this state and if possession is taken from the manufacturer 1425
by the purchaser within this state for the sole purpose of 1426
immediately removing the same from this state in a vehicle owned 1427
by the purchaser; 1428

(22) Sales of services provided by the state or any of its 1429
political subdivisions, agencies, instrumentalities, 1430
institutions, or authorities, or by governmental entities of the 1431
state or any of its political subdivisions, agencies, 1432
instrumentalities, institutions, or authorities; 1433

(23) Sales of motor vehicles to nonresidents of this state 1434
under the circumstances described in division (B) of section 1435
5739.029 of the Revised Code; 1436

(24) Sales to persons engaged in the preparation of eggs 1437
for sale of tangible personal property used or consumed directly 1438
in such preparation, including such tangible personal property 1439
used for cleaning, sanitizing, preserving, grading, sorting, and 1440
classifying by size; packages, including material and parts for 1441
packages, and machinery, equipment, and material for use in 1442
packaging eggs for sale; and handling and transportation 1443
equipment and parts therefor, except motor vehicles licensed to 1444
operate on public highways, used in intraplant or interplant 1445
transfers or shipment of eggs in the process of preparation for 1446
sale, when the plant or plants within or between which such 1447
transfers or shipments occur are operated by the same person. 1448
"Packages" includes containers, cases, baskets, flats, fillers, 1449
filler flats, cartons, closure materials, labels, and labeling 1450
materials, and "packaging" means placing therein. 1451

(25) (a) Sales of water to a consumer for residential use; 1452

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	1453 1454 1455 1456
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	1457 1458
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	1459 1460 1461 1462
(a) To prepare food for human consumption for sale;	1463
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	1464 1465 1466 1467
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1468 1469
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1470 1471
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	1472 1473 1474 1475
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	1476 1477 1478
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the	1479 1480

Revised Code;	1481
(32) The sale, lease, repair, and maintenance of, parts	1482
for, or items attached to or incorporated in, motor vehicles	1483
that are primarily used for transporting tangible personal	1484
property belonging to others by a person engaged in highway	1485
transportation for hire, except for packages and packaging used	1486
for the transportation of tangible personal property;	1487
(33) Sales to the state headquarters of any veterans'	1488
organization in this state that is either incorporated and	1489
issued a charter by the congress of the United States or is	1490
recognized by the United States veterans administration, for use	1491
by the headquarters;	1492
(34) Sales to a telecommunications service vendor, mobile	1493
telecommunications service vendor, or satellite broadcasting	1494
service vendor of tangible personal property and services used	1495
directly and primarily in transmitting, receiving, switching, or	1496
recording any interactive, one- or two-way electromagnetic	1497
communications, including voice, image, data, and information,	1498
through the use of any medium, including, but not limited to,	1499
poles, wires, cables, switching equipment, computers, and record	1500
storage devices and media, and component parts for the tangible	1501
personal property. The exemption provided in this division shall	1502
be in lieu of all other exemptions under division (B) (42) (a) or	1503
(n) of this section to which the vendor may otherwise be	1504
entitled, based upon the use of the thing purchased in providing	1505
the telecommunications, mobile telecommunications, or satellite	1506
broadcasting service.	1507
(35) (a) Sales where the purpose of the consumer is to use	1508
or consume the things transferred in making retail sales and	1509
consisting of newspaper inserts, catalogues, coupons, flyers,	1510

gift certificates, or other advertising material that prices and 1511
describes tangible personal property offered for retail sale. 1512

(b) Sales to direct marketing vendors of preliminary 1513
materials such as photographs, artwork, and typesetting that 1514
will be used in printing advertising material; and of printed 1515
matter that offers free merchandise or chances to win sweepstake 1516
prizes and that is mailed to potential customers with 1517
advertising material described in division (B) (35) (a) of this 1518
section; 1519

(c) Sales of equipment such as telephones, computers, 1520
facsimile machines, and similar tangible personal property 1521
primarily used to accept orders for direct marketing retail 1522
sales. 1523

(d) Sales of automatic food vending machines that preserve 1524
food with a shelf life of forty-five days or less by 1525
refrigeration and dispense it to the consumer. 1526

For purposes of division (B) (35) of this section, "direct 1527
marketing" means the method of selling where consumers order 1528
tangible personal property by United States mail, delivery 1529
service, or telecommunication and the vendor delivers or ships 1530
the tangible personal property sold to the consumer from a 1531
warehouse, catalogue distribution center, or similar fulfillment 1532
facility by means of the United States mail, delivery service, 1533
or common carrier. 1534

(36) Sales to a person engaged in the business of 1535
horticulture or producing livestock of materials to be 1536
incorporated into a horticulture structure or livestock 1537
structure; 1538

(37) Sales of personal computers, computer monitors, 1539

computer keyboards, modems, and other peripheral computer 1540
equipment to an individual who is licensed or certified to teach 1541
in an elementary or a secondary school in this state for use by 1542
that individual in preparation for teaching elementary or 1543
secondary school students; 1544

(38) Sales to a professional racing team of any of the 1545
following: 1546

(a) Motor racing vehicles; 1547

(b) Repair services for motor racing vehicles; 1548

(c) Items of property that are attached to or incorporated 1549
in motor racing vehicles, including engines, chassis, and all 1550
other components of the vehicles, and all spare, replacement, 1551
and rebuilt parts or components of the vehicles; except not 1552
including tires, consumable fluids, paint, and accessories 1553
consisting of instrumentation sensors and related items added to 1554
the vehicle to collect and transmit data by means of telemetry 1555
and other forms of communication. 1556

(39) Sales of used manufactured homes and used mobile 1557
homes, as defined in section 5739.0210 of the Revised Code, made 1558
on or after January 1, 2000; 1559

(40) Sales of tangible personal property and services to a 1560
provider of electricity used or consumed directly and primarily 1561
in generating, transmitting, or distributing electricity for use 1562
by others, including property that is or is to be incorporated 1563
into and will become a part of the consumer's production, 1564
transmission, or distribution system and that retains its 1565
classification as tangible personal property after 1566
incorporation; fuel or power used in the production, 1567
transmission, or distribution of electricity; energy conversion 1568

equipment as defined in section 5727.01 of the Revised Code; and 1569
tangible personal property and services used in the repair and 1570
maintenance of the production, transmission, or distribution 1571
system, including only those motor vehicles as are specially 1572
designed and equipped for such use. The exemption provided in 1573
this division shall be in lieu of all other exemptions in 1574
division (B) (42) (a) or (n) of this section to which a provider 1575
of electricity may otherwise be entitled based on the use of the 1576
tangible personal property or service purchased in generating, 1577
transmitting, or distributing electricity. 1578

(41) Sales to a person providing services under division 1579
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 1580
personal property and services used directly and primarily in 1581
providing taxable services under that section. 1582

(42) Sales where the purpose of the purchaser is to do any 1583
of the following: 1584

(a) To incorporate the thing transferred as a material or 1585
a part into tangible personal property to be produced for sale 1586
by manufacturing, assembling, processing, or refining; or to use 1587
or consume the thing transferred directly in producing tangible 1588
personal property for sale by mining, including, without 1589
limitation, the extraction from the earth of all substances that 1590
are classed geologically as minerals, production of crude oil 1591
and natural gas, or directly in the rendition of a public 1592
utility service, except that the sales tax levied by this 1593
section shall be collected upon all meals, drinks, and food for 1594
human consumption sold when transporting persons. Persons 1595
engaged in rendering services in the exploration for, and 1596
production of, crude oil and natural gas for others are deemed 1597
engaged directly in the exploration for, and production of, 1598

crude oil and natural gas. This paragraph does not exempt from 1599
"retail sale" or "sales at retail" the sale of tangible personal 1600
property that is to be incorporated into a structure or 1601
improvement to real property. 1602

(b) To hold the thing transferred as security for the 1603
performance of an obligation of the vendor; 1604

(c) To resell, hold, use, or consume the thing transferred 1605
as evidence of a contract of insurance; 1606

(d) To use or consume the thing directly in commercial 1607
fishing; 1608

(e) To incorporate the thing transferred as a material or 1609
a part into, or to use or consume the thing transferred directly 1610
in the production of, magazines distributed as controlled 1611
circulation publications; 1612

(f) To use or consume the thing transferred in the 1613
production and preparation in suitable condition for market and 1614
sale of printed, imprinted, overprinted, lithographic, 1615
multilithic, blueprinted, photostatic, or other productions or 1616
reproductions of written or graphic matter; 1617

(g) To use the thing transferred, as described in section 1618
5739.011 of the Revised Code, primarily in a manufacturing 1619
operation to produce tangible personal property for sale; 1620

(h) To use the benefit of a warranty, maintenance or 1621
service contract, or similar agreement, as described in division 1622
(B) (7) of section 5739.01 of the Revised Code, to repair or 1623
maintain tangible personal property, if all of the property that 1624
is the subject of the warranty, contract, or agreement would not 1625
be subject to the tax imposed by this section; 1626

- (i) To use the thing transferred as qualified research and development equipment; 1627
1628
- (j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section. 1629
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- (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; 1642
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- (l) To use or consume the thing transferred in the production of a newspaper for distribution to the public; 1649
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- (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; 1651
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(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 lessee of a motor vehicle that is being repaired or serviced, if the thing transferred is a rented motor vehicle and the purchaser is reimbursed for the cost of the rented motor vehicle by a manufacturer, warrantor, or provider of a maintenance, service, or other similar contract or agreement, with respect to the motor vehicle that is being repaired or serviced.

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

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

(44) Sales of replacement and modification parts for 1685
engines, airframes, instruments, and interiors in, and paint 1686
for, aircraft used primarily in a fractional aircraft ownership 1687
program, and sales of services for the repair, modification, and 1688
maintenance of such aircraft, and machinery, equipment, and 1689
supplies primarily used to provide those services. 1690

(45) Sales of telecommunications service that is used 1691
directly and primarily to perform the functions of a call 1692
center. As used in this division, "call center" means any 1693
physical location where telephone calls are placed or received 1694
in high volume for the purpose of making sales, marketing, 1695
customer service, technical support, or other specialized 1696
business activity, and that employs at least fifty individuals 1697
that engage in call center activities on a full-time basis, or 1698
sufficient individuals to fill fifty full-time equivalent 1699
positions. 1700

(46) Sales by a telecommunications service vendor of 900 1701
service to a subscriber. This division does not apply to 1702
information services, as defined in division (FF) of section 1703
5739.01 of the Revised Code. 1704

(47) Sales of value-added non-voice data service. This 1705
division does not apply to any similar service that is not 1706
otherwise a telecommunications service. 1707

(48) (a) Sales of machinery, equipment, and software to a 1708
qualified direct selling entity for use in a warehouse or 1709
distribution center primarily for storing, transporting, or 1710
otherwise handling inventory that is held for sale to 1711
independent salespersons who operate as direct sellers and that 1712
is held primarily for distribution outside this state; 1713

(b) As used in division (B) (48) (a) of this section:	1714
(i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.	1715 1716 1717 1718 1719
(ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B) (48) of this section after execution of the tax credit agreement by the tax credit authority.	1720 1721 1722 1723 1724 1725 1726 1727 1728 1729
(c) Division (B) (48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.	1730 1731 1732 1733
(49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B) (49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.	1734 1735 1736 1737 1738 1739 1740 1741
(50) Sales of full flight simulators that are used for	1742

pilot or flight-crew training, sales of repair or replacement 1743
parts or components, and sales of repair or maintenance services 1744
for such full flight simulators. "Full flight simulator" means a 1745
replica of a specific type, or make, model, and series of 1746
aircraft cockpit. It includes the assemblage of equipment and 1747
computer programs necessary to represent aircraft operations in 1748
ground and flight conditions, a visual system providing an out- 1749
of-the-cockpit view, and a system that provides cues at least 1750
equivalent to those of a three-degree-of-freedom motion system, 1751
and has the full range of capabilities of the systems installed 1752
in the device as described in appendices A and B of part 60 of 1753
chapter 1 of title 14 of the Code of Federal Regulations. 1754

(51) Any transfer or lease of tangible personal property 1755
between the state and JobsOhio in accordance with section 1756
4313.02 of the Revised Code. 1757

(52) (a) Sales to a qualifying corporation. 1758

(b) As used in division (B) (52) of this section: 1759

(i) "Qualifying corporation" means a nonprofit corporation 1760
organized in this state that leases from an eligible county 1761
land, buildings, structures, fixtures, and improvements to the 1762
land that are part of or used in a public recreational facility 1763
used by a major league professional athletic team or a class A 1764
to class AAA minor league affiliate of a major league 1765
professional athletic team for a significant portion of the 1766
team's home schedule, provided the following apply: 1767

(I) The facility is leased from the eligible county 1768
pursuant to a lease that requires substantially all of the 1769
revenue from the operation of the business or activity conducted 1770
by the nonprofit corporation at the facility in excess of 1771

operating costs, capital expenditures, and reserves to be paid 1772
to the eligible county at least once per calendar year. 1773

(II) Upon dissolution and liquidation of the nonprofit 1774
corporation, all of its net assets are distributable to the 1775
board of commissioners of the eligible county from which the 1776
corporation leases the facility. 1777

(ii) "Eligible county" has the same meaning as in section 1778
307.695 of the Revised Code. 1779

(53) Sales to or by a cable service provider, video 1780
service provider, or radio or television broadcast station 1781
regulated by the federal government of cable service or 1782
programming, video service or programming, audio service or 1783
programming, or electronically transferred digital audiovisual 1784
or audio work. As used in division (B) (53) of this section, 1785
"cable service" and "cable service provider" have the same 1786
meanings as in section 1332.01 of the Revised Code, and "video 1787
service," "video service provider," and "video programming" have 1788
the same meanings as in section 1332.21 of the Revised Code. 1789

(54) Sales of investment metal bullion and investment 1790
coins. "Investment metal bullion" means any bullion described in 1791
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 1792
whether that bullion is in the physical possession of a trustee. 1793
"Investment coin" means any coin composed primarily of gold, 1794
silver, platinum, or palladium. 1795

(55) (a) Sales of optical aids or components thereof by a 1796
vendor licensed under Chapter 4725. or 4731. of the Revised Code 1797
or otherwise authorized to dispense optical aids or components 1798
under the laws of another state, country, or province. 1799

(b) As used in division (B) (55) of this section: 1800

(i) "Optical aid" means eyeglasses, contact lenses, or other instruments or devices that may aid or correct human vision and that have been prescribed by a physician or optometrist licensed by any state, country, or province; 1801
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(ii) "Eyeglasses" includes lenses and frames into which lenses have been installed if the lenses have been prescribed by a physician or optometrist licensed by any state, country, or province. 1805
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(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established. 1809
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(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues. 1813
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(E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code. 1817
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Section 2. That existing sections 5739.01 and 5739.02 of
the Revised Code are hereby repealed. 1830
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Section 3. The amendment by this act of sections 5739.01
and 5739.02 of the Revised Code applies on and after July 1,
2017. 1832
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Section 4. Section 5739.01 of the Revised Code is
presented in this act as a composite of the section as amended
by both Sub. H.B. 390 and H.B. 466 of the 132nd General
Assembly. The General Assembly, applying the principle stated in
division (B) of section 1.52 of the Revised Code that amendments
are to be harmonized if reasonably capable of simultaneous
operation, finds that the composite is the resulting version of
the section in effect prior to the effective date of the section
as presented in this act. 1835
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Section 5739.02 of the Revised Code is presented in this
act as a composite of the section as amended by Am. Sub. H.B.
64, Sub. H.B. 390, and Sub. S.B. 172, all of the 132nd General
Assembly. The General Assembly, applying the principle stated in
division (B) of section 1.52 of the Revised Code that amendments
are to be harmonized if reasonably capable of simultaneous
operation, finds that the composite is the resulting version of
the section in effect prior to the effective date of the section
as presented in this act. 1844
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