

**As Introduced**

**132nd General Assembly**

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**H. B. No. 116**

**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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Analyzing business policies and procedures; 542

(c) Identifying management information needs;	543
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	544 545 546
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	547 548 549 550 551
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	552 553 554
(g) Testing of business procedures;	555
(h) Training personnel in business procedure applications;	556
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	557 558 559 560 561 562 563
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	564 565
(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	1453
exclusively in the treatment, distribution, and sale of water to	1454
consumers, if such water is delivered to consumers through pipes	1455
or tubing.	1456
(26) Fees charged for inspection or reinspection of motor	1457
vehicles under section 3704.14 of the Revised Code;	1458
(27) Sales to persons licensed to conduct a food service	1459
operation pursuant to section 3717.43 of the Revised Code, of	1460
tangible personal property primarily used directly for the	1461
following:	1462
(a) To prepare food for human consumption for sale;	1463
(b) To preserve food that has been or will be prepared for	1464
human consumption for sale by the food service operator, not	1465
including tangible personal property used to display food for	1466
selection by the consumer;	1467
(c) To clean tangible personal property used to prepare or	1468
serve food for human consumption for sale.	1469
(28) Sales of animals by nonprofit animal adoption	1470
services or county humane societies;	1471
(29) Sales of services to a corporation described in	1472
division (A) of section 5709.72 of the Revised Code, and sales	1473
of tangible personal property that qualifies for exemption from	1474
taxation under section 5709.72 of the Revised Code;	1475
(30) Sales and installation of agricultural land tile, as	1476
defined in division (B) (5) (a) of section 5739.01 of the Revised	1477
Code;	1478
(31) Sales and erection or installation of portable grain	1479
bins, as defined in division (B) (5) (b) of section 5739.01 of the	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  
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- (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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