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Representative Merrin

Cosponsors: Representatives Hambley, McColley, Becker, Roegner, Seitz, Carfagna, Hood, Brinkman, Riedel, Goodman, Sheehy, Keller, Antani, Vitale, Zeltwanger, Koehler, Dean, Bocchieri, Stein, Retherford, Young, Householder, Anielski, Antonio, Arndt, Barnes, Boggs, Butler, Celebrezze, Cera, Clyde, Craig, Dever, DeVitis, Edwards, Faber, Hagan, Holmes, Hughes, Ingram, Kent, Kick, Landis, Lang, LaTourette, Leland, Manning, O'Brien, Patmon, Patterson, Perales, Reineke, Rogers, Romanchuk, Schaffer, Schuring, Slaby, Strahorn, Sweeney, Thompson, West, Wiggam

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
beginning July 2019. 5

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

Section 1. That sections 5739.01 and 5739.02 of the 6
Revised Code be amended to read as follows: 7

Sec. 5739.01. As used in this chapter: 8

(A) "Person" includes individuals, receivers, assignees, 9
trustees in bankruptcy, estates, firms, partnerships, 10
associations, joint-stock companies, joint ventures, clubs, 11
societies, corporations, the state and its political 12
subdivisions, and combinations of individuals of any form. 13

(B) "Sale" and "selling" include all of the following 14
transactions for a consideration in any manner, whether 15
absolutely or conditionally, whether for a price or rental, in 16
money or by exchange, and by any means whatsoever: 17

(1) All transactions by which title or possession, or 18
both, of tangible personal property, is or is to be transferred, 19
or a license to use or consume tangible personal property is or 20
is to be granted; 21

(2) All transactions by which lodging by a hotel is or is 22
to be furnished to transient guests; 23

(3) All transactions by which: 24

(a) An item of tangible personal property is or is to be 25
repaired, except property, the purchase of which would not be 26
subject to the tax imposed by section 5739.02 of the Revised 27
Code; 28

(b) An item of tangible personal property is or is to be 29
installed, except property, the purchase of which would not be 30
subject to the tax imposed by section 5739.02 of the Revised 31
Code or property that is or is to be incorporated into and will 32
become a part of a production, transmission, transportation, or 33
distribution system for the delivery of a public utility 34
service; 35

(c) The service of washing, cleaning, waxing, polishing, 36
or painting a motor vehicle is or is to be furnished; 37

(d) Until August 1, 2003, industrial laundry cleaning 38
services are or are to be provided and, on and after August 1, 39
2003, laundry and dry cleaning services are or are to be 40
provided; 41

(e) Automatic data processing, computer services, or 42
electronic information services are or are to be provided for 43
use in business when the true object of the transaction is the 44
receipt by the consumer of automatic data processing, computer 45
services, or electronic information services rather than the 46
receipt of personal or professional services to which automatic 47
data processing, computer services, or electronic information 48
services are incidental or supplemental. Notwithstanding any 49
other provision of this chapter, such transactions that occur 50
between members of an affiliated group are not sales. An 51
"affiliated group" means two or more persons related in such a 52
way that one person owns or controls the business operation of 53
another member of the group. In the case of corporations with 54
stock, one corporation owns or controls another if it owns more 55
than fifty per cent of the other corporation's common stock with 56
voting rights. 57

(f) Telecommunications service, including prepaid calling 58
service, prepaid wireless calling service, or ancillary service, 59
is or is to be provided, but not including coin-operated 60
telephone service; 61

(g) Landscaping and lawn care service is or is to be 62
provided; 63

(h) Private investigation and security service is or is to 64
be provided; 65

(i) Information services or tangible personal property is 66
provided or ordered by means of a nine hundred telephone call; 67

(j) Building maintenance and janitorial service is or is 68
to be provided; 69

(k) Employment service is or is to be provided; 70

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| (l) Employment placement service is or is to be provided; | 71 |
| (m) Exterminating service is or is to be provided; | 72 |
| (n) Physical fitness facility service is or is to be provided; | 73 74 |
| (o) Recreation and sports club service is or is to be provided; | 75 76 |
| (p) On and after August 1, 2003, satellite broadcasting service is or is to be provided; | 77 78 |
| (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. | 79 80 81 82 83 84 85 86 87 |
| (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; | 88 89 90 91 92 93 94 95 |
| (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. | 96 97 98 99 |

(t) On and after August 1, 2003, snow removal service is 100
or is to be provided. As used in this division, "snow removal 101
service" means the removal of snow by any mechanized means, but 102
does not include the providing of such service by a person that 103
has less than five thousand dollars in sales of such service 104
during the calendar year. 105

(u) Electronic publishing service is or is to be provided 106
to a consumer for use in business, except that such transactions 107
occurring between members of an affiliated group, as defined in 108
division (B) (3) (e) of this section, are not sales. 109

(4) All transactions by which printed, imprinted, 110
overprinted, lithographic, multilithic, blueprinted, 111
photostatic, or other productions or reproductions of written or 112
graphic matter are or are to be furnished or transferred; 113

(5) The production or fabrication of tangible personal 114
property for a consideration for consumers who furnish either 115
directly or indirectly the materials used in the production of 116
fabrication work; and include the furnishing, preparing, or 117
serving for a consideration of any tangible personal property 118
consumed on the premises of the person furnishing, preparing, or 119
serving such tangible personal property. Except as provided in 120
section 5739.03 of the Revised Code, a construction contract 121
pursuant to which tangible personal property is or is to be 122
incorporated into a structure or improvement on and becoming a 123
part of real property is not a sale of such tangible personal 124
property. The construction contractor is the consumer of such 125
tangible personal property, provided that the sale and 126
installation of carpeting, the sale and installation of 127
agricultural land tile, the sale and erection or installation of 128
portable grain bins, or the provision of landscaping and lawn 129

care service and the transfer of property as part of such 130
service is never a construction contract. 131

As used in division (B) (5) of this section: 132

(a) "Agricultural land tile" means fired clay or concrete 133
tile, or flexible or rigid perforated plastic pipe or tubing, 134
incorporated or to be incorporated into a subsurface drainage 135
system appurtenant to land used or to be used primarily in 136
production by farming, agriculture, horticulture, or 137
floriculture. The term does not include such materials when they 138
are or are to be incorporated into a drainage system appurtenant 139
to a building or structure even if the building or structure is 140
used or to be used in such production. 141

(b) "Portable grain bin" means a structure that is used or 142
to be used by a person engaged in farming or agriculture to 143
shelter the person's grain and that is designed to be 144
disassembled without significant damage to its component parts. 145

(6) All transactions in which all of the shares of stock 146
of a closely held corporation are transferred, or an ownership 147
interest in a pass-through entity, as defined in section 5733.04 148
of the Revised Code, is transferred, if the corporation or pass- 149
through entity is not engaging in business and its entire assets 150
consist of boats, planes, motor vehicles, or other tangible 151
personal property operated primarily for the use and enjoyment 152
of the shareholders or owners; 153

(7) All transactions in which a warranty, maintenance or 154
service contract, or similar agreement by which the vendor of 155
the warranty, contract, or agreement agrees to repair or 156
maintain the tangible personal property of the consumer is or is 157
to be provided; 158

(8) The transfer of copyrighted motion picture films used 159
solely for advertising purposes, except that the transfer of 160
such films for exhibition purposes is not a sale; 161

(9) On and after August 1, 2003, all transactions by which 162
tangible personal property is or is to be stored, except such 163
property that the consumer of the storage holds for sale in the 164
regular course of business; 165

(10) All transactions in which "guaranteed auto 166
protection" is provided whereby a person promises to pay to the 167
consumer the difference between the amount the consumer receives 168
from motor vehicle insurance and the amount the consumer owes to 169
a person holding title to or a lien on the consumer's motor 170
vehicle in the event the consumer's motor vehicle suffers a 171
total loss under the terms of the motor vehicle insurance policy 172
or is stolen and not recovered, if the protection and its price 173
are included in the purchase or lease agreement; 174

(11) (a) Except as provided in division (B) (11) (b) of this 175
section, on and after October 1, 2009, all transactions by which 176
health care services are paid for, reimbursed, provided, 177
delivered, arranged for, or otherwise made available by a 178
medicaid health insuring corporation pursuant to the 179
corporation's contract with the state. 180

(b) If the centers for medicare and medicaid services of 181
the United States department of health and human services 182
determines that the taxation of transactions described in 183
division (B) (11) (a) of this section constitutes an impermissible 184
health care-related tax under the "Social Security Act," section 185
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 186
the medicaid director shall notify the tax commissioner of that 187
determination. Beginning with the first day of the month 188

following that notification, the transactions described in 189
division (B) (11) (a) of this section are not sales for the 190
purposes of this chapter or Chapter 5741. of the Revised Code. 191
The tax commissioner shall order that the collection of taxes 192
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 193
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 194
for transactions occurring on or after that date. 195

(12) All transactions by which a specified digital product 196
is provided for permanent use or less than permanent use, 197
regardless of whether continued payment is required. 198

Except as provided in this section, "sale" and "selling" 199
do not include transfers of interest in leased property where 200
the original lessee and the terms of the original lease 201
agreement remain unchanged, or professional, insurance, or 202
personal service transactions that involve the transfer of 203
tangible personal property as an inconsequential element, for 204
which no separate charges are made. 205

(C) "Vendor" means the person providing the service or by 206
whom the transfer effected or license given by a sale is or is 207
to be made or given and, for sales described in division (B) (3) 208
(i) of this section, the telecommunications service vendor that 209
provides the nine hundred telephone service; if two or more 210
persons are engaged in business at the same place of business 211
under a single trade name in which all collections on account of 212
sales by each are made, such persons shall constitute a single 213
vendor. 214

Physicians, dentists, hospitals, and veterinarians who are 215
engaged in selling tangible personal property as received from 216
others, such as ~~eyeglasses~~, mouthwashes, dentifrices, or similar 217
articles, are vendors. Before July 1, 2019, such tangible 218

personal property includes eyeglasses and similar articles. 219

Veterinarians who are engaged in transferring to others for a 220
consideration drugs, the dispensing of which does not require an 221
order of a licensed veterinarian or physician under federal law, 222
are vendors. 223

(D) (1) "Consumer" means the person for whom the service is 224
provided, to whom the transfer effected or license given by a 225
sale is or is to be made or given, to whom the service described 226
in division (B) (3) (f) or (i) of this section is charged, or to 227
whom the admission is granted. 228

(2) Physicians, dentists, hospitals, and blood banks 229
operated by nonprofit institutions and persons licensed to 230
practice veterinary medicine, surgery, and dentistry are 231
consumers of all tangible personal property and services 232
purchased by them in connection with the practice of medicine, 233
dentistry, the rendition of hospital or blood bank service, or 234
the practice of veterinary medicine, surgery, and dentistry. In 235
addition to being consumers of drugs administered by them or by 236
their assistants according to their direction, veterinarians 237
also are consumers of drugs that under federal law may be 238
dispensed only by or upon the order of a licensed veterinarian 239
or physician, when transferred by them to others for a 240
consideration to provide treatment to animals as directed by the 241
veterinarian. 242

(3) A person who performs a facility management, or 243
similar service contract for a contractee is a consumer of all 244
tangible personal property and services purchased for use in 245
connection with the performance of such contract, regardless of 246
whether title to any such property vests in the contractee. The 247
purchase of such property and services is not subject to the 248

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| exception for resale under division (E) (1) of this section. | 249 |
| (4) (a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that printed matter, and the purchase of that printed matter for that purpose is a sale. | 250 251 252 253 254 255 |
| (b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B) (42) (f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter. | 256 257 258 259 260 261 262 263 264 265 |
| (c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes. | 266 267 268 269 270 |
| (5) A person who makes sales of any of the services listed in division (B) (3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E) (1) of this section. | 271 272 273 274 275 |
| (6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by | 276 277 |

that person and used in performing the service, except for 278
packaging materials sold by such person in a transaction 279
separate from the service. 280

(7) In the case of a transaction for health care services 281
under division (B) (11) of this section, a medicaid health 282
insuring corporation is the consumer of such services. The 283
purchase of such services by a medicaid health insuring 284
corporation is not subject to the exception for resale under 285
division (E) (1) of this section or to the exemptions provided 286
under divisions (B) (12), (18), (19), and (22) of section 5739.02 287
of the Revised Code. 288

(E) "Retail sale" and "sales at retail" include all sales, 289
except those in which the purpose of the consumer is to resell 290
the thing transferred or benefit of the service provided, by a 291
person engaging in business, in the form in which the same is, 292
or is to be, received by the person. 293

(F) "Business" includes any activity engaged in by any 294
person with the object of gain, benefit, or advantage, either 295
direct or indirect. "Business" does not include the activity of 296
a person in managing and investing the person's own funds. 297

(G) "Engaging in business" means commencing, conducting, 298
or continuing in business, and liquidating a business when the 299
liquidator thereof holds itself out to the public as conducting 300
such business. Making a casual sale is not engaging in business. 301

(H) (1) (a) "Price," except as provided in divisions (H) (2), 302
(3), and (4) of this section, means the total amount of 303
consideration, including cash, credit, property, and services, 304
for which tangible personal property or services are sold, 305
leased, or rented, valued in money, whether received in money or 306

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| otherwise, without any deduction for any of the following: | 307 |
| (i) The vendor's cost of the property sold; | 308 |
| (ii) The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the vendor, all taxes imposed on the vendor, including the tax imposed under Chapter 5751. of the Revised Code, and any other expense of the vendor; | 309 310 311 312 313 |
| (iii) Charges by the vendor for any services necessary to complete the sale; | 314 315 |
| (iv) On and after August 1, 2003, delivery charges. As used in this division, "delivery charges" means charges by the vendor for preparation and delivery to a location designated by the consumer of tangible personal property or a service, including transportation, shipping, postage, handling, crating, and packing. | 316 317 318 319 320 321 |
| (v) Installation charges; | 322 |
| (vi) Credit for any trade-in. | 323 |
| (b) "Price" includes consideration received by the vendor from a third party, if the vendor actually receives the consideration from a party other than the consumer, and the consideration is directly related to a price reduction or discount on the sale; the vendor has an obligation to pass the price reduction or discount through to the consumer; the amount of the consideration attributable to the sale is fixed and determinable by the vendor at the time of the sale of the item to the consumer; and one of the following criteria is met: | 324 325 326 327 328 329 330 331 332 |
| (i) The consumer presents a coupon, certificate, or other document to the vendor to claim a price reduction or discount | 333 334 |

where the coupon, certificate, or document is authorized, 335
distributed, or granted by a third party with the understanding 336
that the third party will reimburse any vendor to whom the 337
coupon, certificate, or document is presented; 338

(ii) The consumer identifies the consumer's self to the 339
seller as a member of a group or organization entitled to a 340
price reduction or discount. A preferred customer card that is 341
available to any patron does not constitute membership in such a 342
group or organization. 343

(iii) The price reduction or discount is identified as a 344
third party price reduction or discount on the invoice received 345
by the consumer, or on a coupon, certificate, or other document 346
presented by the consumer. 347

(c) "Price" does not include any of the following: 348

(i) Discounts, including cash, term, or coupons that are 349
not reimbursed by a third party that are allowed by a vendor and 350
taken by a consumer on a sale; 351

(ii) Interest, financing, and carrying charges from credit 352
extended on the sale of tangible personal property or services, 353
if the amount is separately stated on the invoice, bill of sale, 354
or similar document given to the purchaser; 355

(iii) Any taxes legally imposed directly on the consumer 356
that are separately stated on the invoice, bill of sale, or 357
similar document given to the consumer. For the purpose of this 358
division, the tax imposed under Chapter 5751. of the Revised 359
Code is not a tax directly on the consumer, even if the tax or a 360
portion thereof is separately stated. 361

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 362
this section, any discount allowed by an automobile manufacturer 363

to its employee, or to the employee of a supplier, on the 364
purchase of a new motor vehicle from a new motor vehicle dealer 365
in this state. 366

(v) The dollar value of a gift card that is not sold by a 367
vendor or purchased by a consumer and that is redeemed by the 368
consumer in purchasing tangible personal property or services if 369
the vendor is not reimbursed and does not receive compensation 370
from a third party to cover all or part of the gift card value. 371
For the purposes of this division, a gift card is not sold by a 372
vendor or purchased by a consumer if it is distributed pursuant 373
to an awards, loyalty, or promotional program. Past and present 374
purchases of tangible personal property or services by the 375
consumer shall not be treated as consideration exchanged for a 376
gift card. 377

(2) In the case of a sale of any new motor vehicle by a 378
new motor vehicle dealer, as defined in section 4517.01 of the 379
Revised Code, in which another motor vehicle is accepted by the 380
dealer as part of the consideration received, "price" has the 381
same meaning as in division (H)(1) of this section, reduced by 382
the credit afforded the consumer by the dealer for the motor 383
vehicle received in trade. 384

(3) In the case of a sale of any watercraft or outboard 385
motor by a watercraft dealer licensed in accordance with section 386
1547.543 of the Revised Code, in which another watercraft, 387
watercraft and trailer, or outboard motor is accepted by the 388
dealer as part of the consideration received, "price" has the 389
same meaning as in division (H)(1) of this section, reduced by 390
the credit afforded the consumer by the dealer for the 391
watercraft, watercraft and trailer, or outboard motor received 392
in trade. As used in this division, "watercraft" includes an 393

outdrive unit attached to the watercraft. 394

(4) In the case of transactions for health care services 395
under division (B) (11) of this section, "price" means the amount 396
of managed care premiums received each month by a medicaid 397
health insuring corporation. 398

(I) "Receipts" means the total amount of the prices of the 399
sales of vendors, provided that the dollar value of gift cards 400
distributed pursuant to an awards, loyalty, or promotional 401
program, and cash discounts allowed and taken on sales at the 402
time they are consummated are not included, minus any amount 403
deducted as a bad debt pursuant to section 5739.121 of the 404
Revised Code. "Receipts" does not include the sale price of 405
property returned or services rejected by consumers when the 406
full sale price and tax are refunded either in cash or by 407
credit. 408

(J) "Place of business" means any location at which a 409
person engages in business. 410

(K) "Premises" includes any real property or portion 411
thereof upon which any person engages in selling tangible 412
personal property at retail or making retail sales and also 413
includes any real property or portion thereof designated for, or 414
devoted to, use in conjunction with the business engaged in by 415
such person. 416

(L) "Casual sale" means a sale of an item of tangible 417
personal property that was obtained by the person making the 418
sale, through purchase or otherwise, for the person's own use 419
and was previously subject to any state's taxing jurisdiction on 420
its sale or use, and includes such items acquired for the 421
seller's use that are sold by an auctioneer employed directly by 422

the person for such purpose, provided the location of such sales 423
is not the auctioneer's permanent place of business. As used in 424
this division, "permanent place of business" includes any 425
location where such auctioneer has conducted more than two 426
auctions during the year. 427

(M) "Hotel" means every establishment kept, used, 428
maintained, advertised, or held out to the public to be a place 429
where sleeping accommodations are offered to guests, in which 430
five or more rooms are used for the accommodation of such 431
guests, whether the rooms are in one or several structures, 432
except as otherwise provided in division (G) of section 5739.09 433
of the Revised Code. 434

(N) "Transient guests" means persons occupying a room or 435
rooms for sleeping accommodations for less than thirty 436
consecutive days. 437

(O) "Making retail sales" means the effecting of 438
transactions wherein one party is obligated to pay the price and 439
the other party is obligated to provide a service or to transfer 440
title to or possession of the item sold. "Making retail sales" 441
does not include the preliminary acts of promoting or soliciting 442
the retail sales, other than the distribution of printed matter 443
which displays or describes and prices the item offered for 444
sale, nor does it include delivery of a predetermined quantity 445
of tangible personal property or transportation of property or 446
personnel to or from a place where a service is performed. 447

(P) "Used directly in the rendition of a public utility 448
service" means that property that is to be incorporated into and 449
will become a part of the consumer's production, transmission, 450
transportation, or distribution system and that retains its 451
classification as tangible personal property after such 452

incorporation; fuel or power used in the production, 453
transmission, transportation, or distribution system; and 454
tangible personal property used in the repair and maintenance of 455
the production, transmission, transportation, or distribution 456
system, including only such motor vehicles as are specially 457
designed and equipped for such use. Tangible personal property 458
and services used primarily in providing highway transportation 459
for hire are not used directly in the rendition of a public 460
utility service. In this definition, "public utility" includes a 461
citizen of the United States holding, and required to hold, a 462
certificate of public convenience and necessity issued under 49 463
U.S.C. 41102. 464

(Q) "Refining" means removing or separating a desirable 465
product from raw or contaminated materials by distillation or 466
physical, mechanical, or chemical processes. 467

(R) "Assembly" and "assembling" mean attaching or fitting 468
together parts to form a product, but do not include packaging a 469
product. 470

(S) "Manufacturing operation" means a process in which 471
materials are changed, converted, or transformed into a 472
different state or form from which they previously existed and 473
includes refining materials, assembling parts, and preparing raw 474
materials and parts by mixing, measuring, blending, or otherwise 475
committing such materials or parts to the manufacturing process. 476
"Manufacturing operation" does not include packaging. 477

(T) "Fiscal officer" means, with respect to a regional 478
transit authority, the secretary-treasurer thereof, and with 479
respect to a county that is a transit authority, the fiscal 480
officer of the county transit board if one is appointed pursuant 481
to section 306.03 of the Revised Code or the county auditor if 482

the board of county commissioners operates the county transit system. 483
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(U) "Transit authority" means a regional transit authority 485
created pursuant to section 306.31 of the Revised Code or a 486
county in which a county transit system is created pursuant to 487
section 306.01 of the Revised Code. For the purposes of this 488
chapter, a transit authority must extend to at least the entire 489
area of a single county. A transit authority that includes 490
territory in more than one county must include all the area of 491
the most populous county that is a part of such transit 492
authority. County population shall be measured by the most 493
recent census taken by the United States census bureau. 494

(V) "Legislative authority" means, with respect to a 495
regional transit authority, the board of trustees thereof, and 496
with respect to a county that is a transit authority, the board 497
of county commissioners. 498

(W) "Territory of the transit authority" means all of the 499
area included within the territorial boundaries of a transit 500
authority as they from time to time exist. Such territorial 501
boundaries must at all times include all the area of a single 502
county or all the area of the most populous county that is a 503
part of such transit authority. County population shall be 504
measured by the most recent census taken by the United States 505
census bureau. 506

(X) "Providing a service" means providing or furnishing 507
anything described in division (B) (3) of this section for 508
consideration. 509

(Y) (1) (a) "Automatic data processing" means processing of 510
others' data, including keypunching or similar data entry 511

services together with verification thereof, or providing access 512
to computer equipment for the purpose of processing data. 513

(b) "Computer services" means providing services 514
consisting of specifying computer hardware configurations and 515
evaluating technical processing characteristics, computer 516
programming, and training of computer programmers and operators, 517
provided in conjunction with and to support the sale, lease, or 518
operation of taxable computer equipment or systems. 519

(c) "Electronic information services" means providing 520
access to computer equipment by means of telecommunications 521
equipment for the purpose of either of the following: 522

(i) Examining or acquiring data stored in or accessible to 523
the computer equipment; 524

(ii) Placing data into the computer equipment to be 525
retrieved by designated recipients with access to the computer 526
equipment. 527

For transactions occurring on or after the effective date 528
of the amendment of this section by H.B. 157 of the 127th 529
general assembly, December 21, 2007, "electronic information 530
services" does not include electronic publishing as defined in 531
division (LLL) of this section. 532

(d) "Automatic data processing, computer services, or 533
electronic information services" shall not include personal or 534
professional services. 535

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 536
section, "personal and professional services" means all services 537
other than automatic data processing, computer services, or 538
electronic information services, including but not limited to: 539

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| (a) Accounting and legal services such as advice on tax matters, asset management, budgetary matters, quality control, information security, and auditing and any other situation where the service provider receives data or information and studies, alters, analyzes, interprets, or adjusts such material; | 540 541 542 543 544 |
| (b) Analyzing business policies and procedures; | 545 |
| (c) Identifying management information needs; | 546 |
| (d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives; | 547 548 549 |
| (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; | 550 551 552 553 554 |
| (f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled; | 555 556 557 |
| (g) Testing of business procedures; | 558 |
| (h) Training personnel in business procedure applications; | 559 |
| (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; | 560 561 562 563 564 565 566 |
| (j) Providing debt collection services by any oral, | 567 |

written, graphic, or electronic means; 568

(k) Providing digital advertising services. 569

The services listed in divisions (Y) (2) (a) to (k) of this 570
section are not automatic data processing or computer services. 571

(Z) "Highway transportation for hire" means the 572
transportation of personal property belonging to others for 573
consideration by any of the following: 574

(1) The holder of a permit or certificate issued by this 575
state or the United States authorizing the holder to engage in 576
transportation of personal property belonging to others for 577
consideration over or on highways, roadways, streets, or any 578
similar public thoroughfare; 579

(2) A person who engages in the transportation of personal 580
property belonging to others for consideration over or on 581
highways, roadways, streets, or any similar public thoroughfare 582
but who could not have engaged in such transportation on 583
December 11, 1985, unless the person was the holder of a permit 584
or certificate of the types described in division (Z) (1) of this 585
section; 586

(3) A person who leases a motor vehicle to and operates it 587
for a person described by division (Z) (1) or (2) of this 588
section. 589

(AA) (1) "Telecommunications service" means the electronic 590
transmission, conveyance, or routing of voice, data, audio, 591
video, or any other information or signals to a point, or 592
between or among points. "Telecommunications service" includes 593
such transmission, conveyance, or routing in which computer 594
processing applications are used to act on the form, code, or 595
protocol of the content for purposes of transmission, 596

conveyance, or routing without regard to whether the service is 597
referred to as voice-over internet protocol service or is 598
classified by the federal communications commission as enhanced 599
or value-added. "Telecommunications service" does not include 600
any of the following: 601

(a) Data processing and information services that allow 602
data to be generated, acquired, stored, processed, or retrieved 603
and delivered by an electronic transmission to a consumer where 604
the consumer's primary purpose for the underlying transaction is 605
the processed data or information; 606

(b) Installation or maintenance of wiring or equipment on 607
a customer's premises; 608

(c) Tangible personal property; 609

(d) Advertising, including directory advertising; 610

(e) Billing and collection services provided to third 611
parties; 612

(f) Internet access service; 613

(g) Radio and television audio and video programming 614
services, regardless of the medium, including the furnishing of 615
transmission, conveyance, and routing of such services by the 616
programming service provider. Radio and television audio and 617
video programming services include, but are not limited to, 618
cable service, as defined in 47 U.S.C. 522(6), and audio and 619
video programming services delivered by commercial mobile radio 620
service providers, as defined in 47 C.F.R. 20.3; 621

(h) Ancillary service; 622

(i) Digital products delivered electronically, including 623
software, music, video, reading materials, or ring tones. 624

(2) "Ancillary service" means a service that is associated 625
with or incidental to the provision of telecommunications 626
service, including conference bridging service, detailed 627
telecommunications billing service, directory assistance, 628
vertical service, and voice mail service. As used in this 629
division: 630

(a) "Conference bridging service" means an ancillary 631
service that links two or more participants of an audio or video 632
conference call, including providing a telephone number. 633
"Conference bridging service" does not include 634
telecommunications services used to reach the conference bridge. 635

(b) "Detailed telecommunications billing service" means an 636
ancillary service of separately stating information pertaining 637
to individual calls on a customer's billing statement. 638

(c) "Directory assistance" means an ancillary service of 639
providing telephone number or address information. 640

(d) "Vertical service" means an ancillary service that is 641
offered in connection with one or more telecommunications 642
services, which offers advanced calling features that allow 643
customers to identify callers and manage multiple calls and call 644
connections, including conference bridging service. 645

(e) "Voice mail service" means an ancillary service that 646
enables the customer to store, send, or receive recorded 647
messages. "Voice mail service" does not include any vertical 648
services that the customer may be required to have in order to 649
utilize the voice mail service. 650

(3) "900 service" means an inbound toll telecommunications 651
service purchased by a subscriber that allows the subscriber's 652
customers to call in to the subscriber's prerecorded 653

announcement or live service, and which is typically marketed 654
under the name "900 service" and any subsequent numbers 655
designated by the federal communications commission. "900 656
service" does not include the charge for collection services 657
provided by the seller of the telecommunications service to the 658
subscriber, or services or products sold by the subscriber to 659
the subscriber's customer. 660

(4) "Prepaid calling service" means the right to access 661
exclusively telecommunications services, which must be paid for 662
in advance and which enables the origination of calls using an 663
access number or authorization code, whether manually or 664
electronically dialed, and that is sold in predetermined units 665
or dollars of which the number declines with use in a known 666
amount. 667

(5) "Prepaid wireless calling service" means a 668
telecommunications service that provides the right to utilize 669
mobile telecommunications service as well as other non- 670
telecommunications services, including the download of digital 671
products delivered electronically, and content and ancillary 672
services, that must be paid for in advance and that is sold in 673
predetermined units or dollars of which the number declines with 674
use in a known amount. 675

(6) "Value-added non-voice data service" means a 676
telecommunications service in which computer processing 677
applications are used to act on the form, content, code, or 678
protocol of the information or data primarily for a purpose 679
other than transmission, conveyance, or routing. 680

(7) "Coin-operated telephone service" means a 681
telecommunications service paid for by inserting money into a 682
telephone accepting direct deposits of money to operate. 683

(8) "Customer" has the same meaning as in section 5739.034 684
of the Revised Code. 685

(BB) "Laundry and dry cleaning services" means removing 686
soil or dirt from towels, linens, articles of clothing, or other 687
fabric items that belong to others and supplying towels, linens, 688
articles of clothing, or other fabric items. "Laundry and dry 689
cleaning services" does not include the provision of self- 690
service facilities for use by consumers to remove soil or dirt 691
from towels, linens, articles of clothing, or other fabric 692
items. 693

(CC) "Magazines distributed as controlled circulation 694
publications" means magazines containing at least twenty-four 695
pages, at least twenty-five per cent editorial content, issued 696
at regular intervals four or more times a year, and circulated 697
without charge to the recipient, provided that such magazines 698
are not owned or controlled by individuals or business concerns 699
which conduct such publications as an auxiliary to, and 700
essentially for the advancement of the main business or calling 701
of, those who own or control them. 702

(DD) "Landscaping and lawn care service" means the 703
services of planting, seeding, sodding, removing, cutting, 704
trimming, pruning, mulching, aerating, applying chemicals, 705
watering, fertilizing, and providing similar services to 706
establish, promote, or control the growth of trees, shrubs, 707
flowers, grass, ground cover, and other flora, or otherwise 708
maintaining a lawn or landscape grown or maintained by the owner 709
for ornamentation or other nonagricultural purpose. However, 710
"landscaping and lawn care service" does not include the 711
providing of such services by a person who has less than five 712
thousand dollars in sales of such services during the calendar 713

year. 714

(EE) "Private investigation and security service" means 715
the performance of any activity for which the provider of such 716
service is required to be licensed pursuant to Chapter 4749. of 717
the Revised Code, or would be required to be so licensed in 718
performing such services in this state, and also includes the 719
services of conducting polygraph examinations and of monitoring 720
or overseeing the activities on or in, or the condition of, the 721
consumer's home, business, or other facility by means of 722
electronic or similar monitoring devices. "Private investigation 723
and security service" does not include special duty services 724
provided by off-duty police officers, deputy sheriffs, and other 725
peace officers regularly employed by the state or a political 726
subdivision. 727

(FF) "Information services" means providing conversation, 728
giving consultation or advice, playing or making a voice or 729
other recording, making or keeping a record of the number of 730
callers, and any other service provided to a consumer by means 731
of a nine hundred telephone call, except when the nine hundred 732
telephone call is the means by which the consumer makes a 733
contribution to a recognized charity. 734

(GG) "Research and development" means designing, creating, 735
or formulating new or enhanced products, equipment, or 736
manufacturing processes, and also means conducting scientific or 737
technological inquiry and experimentation in the physical 738
sciences with the goal of increasing scientific knowledge which 739
may reveal the bases for new or enhanced products, equipment, or 740
manufacturing processes. 741

(HH) "Qualified research and development equipment" means 742
capitalized tangible personal property, and leased personal 743

property that would be capitalized if purchased, used by a 744
person primarily to perform research and development. Tangible 745
personal property primarily used in testing, as defined in 746
division (A) (4) of section 5739.011 of the Revised Code, or used 747
for recording or storing test results, is not qualified research 748
and development equipment unless such property is primarily used 749
by the consumer in testing the product, equipment, or 750
manufacturing process being created, designed, or formulated by 751
the consumer in the research and development activity or in 752
recording or storing such test results. 753

(II) "Building maintenance and janitorial service" means 754
cleaning the interior or exterior of a building and any tangible 755
personal property located therein or thereon, including any 756
services incidental to such cleaning for which no separate 757
charge is made. However, "building maintenance and janitorial 758
service" does not include the providing of such service by a 759
person who has less than five thousand dollars in sales of such 760
service during the calendar year. As used in this division, 761
"cleaning" does not include sanitation services necessary for an 762
establishment described in 21 U.S.C. 608 to comply with rules 763
and regulations adopted pursuant to that section. 764

(JJ) "Employment service" means providing or supplying 765
personnel, on a temporary or long-term basis, to perform work or 766
labor under the supervision or control of another, when the 767
personnel so provided or supplied receive their wages, salary, 768
or other compensation from the provider or supplier of the 769
employment service or from a third party that provided or 770
supplied the personnel to the provider or supplier. "Employment 771
service" does not include: 772

(1) Acting as a contractor or subcontractor, where the 773

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| personnel performing the work are not under the direct control | 774 |
| of the purchaser. | 775 |
| (2) Medical and health care services. | 776 |
| (3) Supplying personnel to a purchaser pursuant to a | 777 |
| contract of at least one year between the service provider and | 778 |
| the purchaser that specifies that each employee covered under | 779 |
| the contract is assigned to the purchaser on a permanent basis. | 780 |
| (4) Transactions between members of an affiliated group, | 781 |
| as defined in division (B) (3) (e) of this section. | 782 |
| (5) Transactions where the personnel so provided or | 783 |
| supplied by a provider or supplier to a purchaser of an | 784 |
| employment service are then provided or supplied by that | 785 |
| purchaser to a third party as an employment service, except | 786 |
| "employment service" does include the transaction between that | 787 |
| purchaser and the third party. | 788 |
| (KK) "Employment placement service" means locating or | 789 |
| finding employment for a person or finding or locating an | 790 |
| employee to fill an available position. | 791 |
| (LL) "Exterminating service" means eradicating or | 792 |
| attempting to eradicate vermin infestations from a building or | 793 |
| structure, or the area surrounding a building or structure, and | 794 |
| includes activities to inspect, detect, or prevent vermin | 795 |
| infestation of a building or structure. | 796 |
| (MM) "Physical fitness facility service" means all | 797 |
| transactions by which a membership is granted, maintained, or | 798 |
| renewed, including initiation fees, membership dues, renewal | 799 |
| fees, monthly minimum fees, and other similar fees and dues, by | 800 |
| a physical fitness facility such as an athletic club, health | 801 |
| spa, or gymnasium, which entitles the member to use the facility | 802 |

for physical exercise. 803

(NN) "Recreation and sports club service" means all 804
transactions by which a membership is granted, maintained, or 805
renewed, including initiation fees, membership dues, renewal 806
fees, monthly minimum fees, and other similar fees and dues, by 807
a recreation and sports club, which entitles the member to use 808
the facilities of the organization. "Recreation and sports club" 809
means an organization that has ownership of, or controls or 810
leases on a continuing, long-term basis, the facilities used by 811
its members and includes an aviation club, gun or shooting club, 812
yacht club, card club, swimming club, tennis club, golf club, 813
country club, riding club, amateur sports club, or similar 814
organization. 815

(OO) "Livestock" means farm animals commonly raised for 816
food, food production, or other agricultural purposes, 817
including, but not limited to, cattle, sheep, goats, swine, 818
poultry, and captive deer. "Livestock" does not include 819
invertebrates, amphibians, reptiles, domestic pets, animals for 820
use in laboratories or for exhibition, or other animals not 821
commonly raised for food or food production. 822

(PP) "Livestock structure" means a building or structure 823
used exclusively for the housing, raising, feeding, or 824
sheltering of livestock, and includes feed storage or handling 825
structures and structures for livestock waste handling. 826

(QQ) "Horticulture" means the growing, cultivation, and 827
production of flowers, fruits, herbs, vegetables, sod, 828
mushrooms, and nursery stock. As used in this division, "nursery 829
stock" has the same meaning as in section 927.51 of the Revised 830
Code. 831

(RR) "Horticulture structure" means a building or 832
structure used exclusively for the commercial growing, raising, 833
or overwintering of horticultural products, and includes the 834
area used for stocking, storing, and packing horticultural 835
products when done in conjunction with the production of those 836
products. 837

(SS) "Newspaper" means an unbound publication bearing a 838
title or name that is regularly published, at least as 839
frequently as biweekly, and distributed from a fixed place of 840
business to the public in a specific geographic area, and that 841
contains a substantial amount of news matter of international, 842
national, or local events of interest to the general public. 843

(TT) "Professional racing team" means a person that 844
employs at least twenty full-time employees for the purpose of 845
conducting a motor vehicle racing business for profit. The 846
person must conduct the business with the purpose of racing one 847
or more motor racing vehicles in at least ten competitive 848
professional racing events each year that comprise all or part 849
of a motor racing series sanctioned by one or more motor racing 850
sanctioning organizations. A "motor racing vehicle" means a 851
vehicle for which the chassis, engine, and parts are designed 852
exclusively for motor racing, and does not include a stock or 853
production model vehicle that may be modified for use in racing. 854
For the purposes of this division: 855

(1) A "competitive professional racing event" is a motor 856
vehicle racing event sanctioned by one or more motor racing 857
sanctioning organizations, at which aggregate cash prizes in 858
excess of eight hundred thousand dollars are awarded to the 859
competitors. 860

(2) "Full-time employee" means an individual who is 861

employed for consideration for thirty-five or more hours a week, 862
or who renders any other standard of service generally accepted 863
by custom or specified by contract as full-time employment. 864

(UU) (1) "Lease" or "rental" means any transfer of the 865
possession or control of tangible personal property for a fixed 866
or indefinite term, for consideration. "Lease" or "rental" 867
includes future options to purchase or extend, and agreements 868
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 869
trailers where the amount of consideration may be increased or 870
decreased by reference to the amount realized upon the sale or 871
disposition of the property. "Lease" or "rental" does not 872
include: 873

(a) A transfer of possession or control of tangible 874
personal property under a security agreement or a deferred 875
payment plan that requires the transfer of title upon completion 876
of the required payments; 877

(b) A transfer of possession or control of tangible 878
personal property under an agreement that requires the transfer 879
of title upon completion of required payments and payment of an 880
option price that does not exceed the greater of one hundred 881
dollars or one per cent of the total required payments; 882

(c) Providing tangible personal property along with an 883
operator for a fixed or indefinite period of time, if the 884
operator is necessary for the property to perform as designed. 885
For purposes of this division, the operator must do more than 886
maintain, inspect, or set up the tangible personal property. 887

(2) "Lease" and "rental," as defined in division (UU) of 888
this section, shall not apply to leases or rentals that exist 889
before June 26, 2003. 890

(3) "Lease" and "rental" have the same meaning as in 891
division (UU) (1) of this section regardless of whether a 892
transaction is characterized as a lease or rental under 893
generally accepted accounting principles, the Internal Revenue 894
Code, Title XIII of the Revised Code, or other federal, state, 895
or local laws. 896

(VV) "Mobile telecommunications service" has the same 897
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 898
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 899
amended, and, on and after August 1, 2003, includes related fees 900
and ancillary services, including universal service fees, 901
detailed billing service, directory assistance, service 902
initiation, voice mail service, and vertical services, such as 903
caller ID and three-way calling. 904

(WW) "Certified service provider" has the same meaning as 905
in section 5740.01 of the Revised Code. 906

(XX) "Satellite broadcasting service" means the 907
distribution or broadcasting of programming or services by 908
satellite directly to the subscriber's receiving equipment 909
without the use of ground receiving or distribution equipment, 910
except the subscriber's receiving equipment or equipment used in 911
the uplink process to the satellite, and includes all service 912
and rental charges, premium channels or other special services, 913
installation and repair service charges, and any other charges 914
having any connection with the provision of the satellite 915
broadcasting service. 916

(YY) "Tangible personal property" means personal property 917
that can be seen, weighed, measured, felt, or touched, or that 918
is in any other manner perceptible to the senses. For purposes 919
of this chapter and Chapter 5741. of the Revised Code, "tangible 920

personal property" includes motor vehicles, electricity, water, 921
gas, steam, and prewritten computer software. 922

(ZZ) "Direct mail" means printed material delivered or 923
distributed by United States mail or other delivery service to a 924
mass audience or to addressees on a mailing list provided by the 925
consumer or at the direction of the consumer when the cost of 926
the items are not billed directly to the recipients. "Direct 927
mail" includes tangible personal property supplied directly or 928
indirectly by the consumer to the direct mail vendor for 929
inclusion in the package containing the printed material. 930
"Direct mail" does not include multiple items of printed 931
material delivered to a single address. 932

(AAA) "Computer" means an electronic device that accepts 933
information in digital or similar form and manipulates it for a 934
result based on a sequence of instructions. 935

(BBB) "Computer software" means a set of coded 936
instructions designed to cause a computer or automatic data 937
processing equipment to perform a task. 938

(CCC) "Delivered electronically" means delivery of 939
computer software from the seller to the purchaser by means 940
other than tangible storage media. 941

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

creator to the specifications of a specific purchaser when it is 950
sold to a person other than the purchaser. If a person modifies 951
or enhances computer software of which the person is not the 952
author or creator, the person shall be deemed to be the author 953
or creator only of such person's modifications or enhancements. 954
Prewritten computer software or a prewritten portion thereof 955
that is modified or enhanced to any degree, where such 956
modification or enhancement is designed and developed to the 957
specifications of a specific purchaser, remains prewritten 958
computer software; provided, however, that where there is a 959
reasonable, separately stated charge or an invoice or other 960
statement of the price given to the purchaser for the 961
modification or enhancement, the modification or enhancement 962
shall not constitute prewritten computer software. 963

(EEE) (1) "Food" means substances, whether in liquid, 964
concentrated, solid, frozen, dried, or dehydrated form, that are 965
sold for ingestion or chewing by humans and are consumed for 966
their taste or nutritional value. "Food" does not include 967
alcoholic beverages, dietary supplements, soft drinks, or 968
tobacco. 969

(2) As used in division (EEE) (1) of this section: 970

(a) "Alcoholic beverages" means beverages that are 971
suitable for human consumption and contain one-half of one per 972
cent or more of alcohol by volume. 973

(b) "Dietary supplements" means any product, other than 974
tobacco, that is intended to supplement the diet and that is 975
intended for ingestion in tablet, capsule, powder, softgel, 976
gelcap, or liquid form, or, if not intended for ingestion in 977
such a form, is not represented as conventional food for use as 978
a sole item of a meal or of the diet; that is required to be 979

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| labeled as a dietary supplement, identifiable by the "supplement | 980 |
| facts" box found on the label, as required by 21 C.F.R. 101.36; | 981 |
| and that contains one or more of the following dietary | 982 |
| ingredients: | 983 |
| (i) A vitamin; | 984 |
| (ii) A mineral; | 985 |
| (iii) An herb or other botanical; | 986 |
| (iv) An amino acid; | 987 |
| (v) A dietary substance for use by humans to supplement | 988 |
| the diet by increasing the total dietary intake; | 989 |
| (vi) A concentrate, metabolite, constituent, extract, or | 990 |
| combination of any ingredient described in divisions (EEE) (2) (b) | 991 |
| (i) to (v) of this section. | 992 |
| (c) "Soft drinks" means nonalcoholic beverages that | 993 |
| contain natural or artificial sweeteners. "Soft drinks" does not | 994 |
| include beverages that contain milk or milk products, soy, rice, | 995 |
| or similar milk substitutes, or that contains greater than fifty | 996 |
| per cent vegetable or fruit juice by volume. | 997 |
| (d) "Tobacco" means cigarettes, cigars, chewing or pipe | 998 |
| tobacco, or any other item that contains tobacco. | 999 |
| (FFF) "Drug" means a compound, substance, or preparation, | 1000 |
| and any component of a compound, substance, or preparation, | 1001 |
| other than food, dietary supplements, or alcoholic beverages | 1002 |
| that is recognized in the official United States pharmacopoeia, | 1003 |
| official homeopathic pharmacopoeia of the United States, or | 1004 |
| official national formulary, and supplements to them; is | 1005 |
| intended for use in the diagnosis, cure, mitigation, treatment, | 1006 |
| or prevention of disease; or is intended to affect the structure | 1007 |

or any function of the body. 1008

(GGG) "Prescription" means an order, formula, or recipe 1009
issued in any form of oral, written, electronic, or other means 1010
of transmission by a duly licensed practitioner authorized by 1011
the laws of this state to issue a prescription. 1012

(HHH) "Durable medical equipment" means equipment, 1013
including repair and replacement parts for such equipment, that 1014
can withstand repeated use, is primarily and customarily used to 1015
serve a medical purpose, generally is not useful to a person in 1016
the absence of illness or injury, and is not worn in or on the 1017
body. "Durable medical equipment" does not include mobility 1018
enhancing equipment. 1019

(III) "Mobility enhancing equipment" means equipment, 1020
including repair and replacement parts for such equipment, that 1021
is primarily and customarily used to provide or increase the 1022
ability to move from one place to another and is appropriate for 1023
use either in a home or a motor vehicle, that is not generally 1024
used by persons with normal mobility, and that does not include 1025
any motor vehicle or equipment on a motor vehicle normally 1026
provided by a motor vehicle manufacturer. "Mobility enhancing 1027
equipment" does not include durable medical equipment. 1028

(JJJ) "Prosthetic device" means a replacement, corrective, 1029
or supportive device, including repair and replacement parts for 1030
the device, worn on or in the human body to artificially replace 1031
a missing portion of the body, prevent or correct physical 1032
deformity or malfunction, or support a weak or deformed portion 1033
of the body. As used in this division, "prosthetic device" does 1034
not include corrective eyeglasses, contact lenses, or dental 1035
prosthesis. 1036

(KKK) (1) "Fractional aircraft ownership program" means a 1037
program in which persons within an affiliated group sell and 1038
manage fractional ownership program aircraft, provided that at 1039
least one hundred airworthy aircraft are operated in the program 1040
and the program meets all of the following criteria: 1041

(a) Management services are provided by at least one 1042
program manager within an affiliated group on behalf of the 1043
fractional owners. 1044

(b) Each program aircraft is owned or possessed by at 1045
least one fractional owner. 1046

(c) Each fractional owner owns or possesses at least a 1047
one-sixteenth interest in at least one fixed-wing program 1048
aircraft. 1049

(d) A dry-lease aircraft interchange arrangement is in 1050
effect among all of the fractional owners. 1051

(e) Multi-year program agreements are in effect regarding 1052
the fractional ownership, management services, and dry-lease 1053
aircraft interchange arrangement aspects of the program. 1054

(2) As used in division (KKK) (1) of this section: 1055

(a) "Affiliated group" has the same meaning as in division 1056
(B) (3) (e) of this section. 1057

(b) "Fractional owner" means a person that owns or 1058
possesses at least a one-sixteenth interest in a program 1059
aircraft and has entered into the agreements described in 1060
division (KKK) (1) (e) of this section. 1061

(c) "Fractional ownership program aircraft" or "program 1062
aircraft" means a turbojet aircraft that is owned or possessed 1063
by a fractional owner and that has been included in a dry-lease 1064

aircraft interchange arrangement and agreement under divisions 1065
(KKK) (1) (d) and (e) of this section, or an aircraft a program 1066
manager owns or possesses primarily for use in a fractional 1067
aircraft ownership program. 1068

(d) "Management services" means administrative and 1069
aviation support services furnished under a fractional aircraft 1070
ownership program in accordance with a management services 1071
agreement under division (KKK) (1) (e) of this section, and 1072
offered by the program manager to the fractional owners, 1073
including, at a minimum, the establishment and implementation of 1074
safety guidelines; the coordination of the scheduling of the 1075
program aircraft and crews; program aircraft maintenance; 1076
program aircraft insurance; crew training for crews employed, 1077
furnished, or contracted by the program manager or the 1078
fractional owner; the satisfaction of record-keeping 1079
requirements; and the development and use of an operations 1080
manual and a maintenance manual for the fractional aircraft 1081
ownership program. 1082

(e) "Program manager" means the person that offers 1083
management services to fractional owners pursuant to a 1084
management services agreement under division (KKK) (1) (e) of this 1085
section. 1086

(LLL) "Electronic publishing" means providing access to 1087
one or more of the following primarily for business customers, 1088
including the federal government or a state government or a 1089
political subdivision thereof, to conduct research: news; 1090
business, financial, legal, consumer, or credit materials; 1091
editorials, columns, reader commentary, or features; photos or 1092
images; archival or research material; legal notices, identity 1093
verification, or public records; scientific, educational, 1094

instructional, technical, professional, trade, or other literary 1095
materials; or other similar information which has been gathered 1096
and made available by the provider to the consumer in an 1097
electronic format. Providing electronic publishing includes the 1098
functions necessary for the acquisition, formatting, editing, 1099
storage, and dissemination of data or information that is the 1100
subject of a sale. 1101

(MMM) "Medicaid health insuring corporation" means a 1102
health insuring corporation that holds a certificate of 1103
authority under Chapter 1751. of the Revised Code and is under 1104
contract with the department of ~~job and family services~~ medicaid 1105
pursuant to section ~~5111.17~~ 5167.10 of the Revised Code. 1106

(NNN) "Managed care premium" means any premium, 1107
capitation, or other payment a medicaid health insuring 1108
corporation receives for providing or arranging for the 1109
provision of health care services to its members or enrollees 1110
residing in this state. 1111

(OOO) "Captive deer" means deer and other cervidae that 1112
have been legally acquired, or their offspring, that are 1113
privately owned for agricultural or farming purposes. 1114

(PPP) "Gift card" means a document, card, certificate, or 1115
other record, whether tangible or intangible, that may be 1116
redeemed by a consumer for a dollar value when making a purchase 1117
of tangible personal property or services. 1118

(QQQ) "Specified digital product" means an electronically 1119
transferred digital audiovisual work, digital audio work, or 1120
digital book. 1121

As used in division (QQQ) of this section: 1122

(1) "Digital audiovisual work" means a series of related 1123

images that, when shown in succession, impart an impression of 1124
motion, together with accompanying sounds, if any. 1125

(2) "Digital audio work" means a work that results from 1126
the fixation of a series of musical, spoken, or other sounds, 1127
including digitized sound files that are downloaded onto a 1128
device and that may be used to alert the customer with respect 1129
to a communication. 1130

(3) "Digital book" means a work that is generally 1131
recognized in the ordinary and usual sense as a book. 1132

(4) "Electronically transferred" means obtained by the 1133
purchaser by means other than tangible storage media. 1134

(RRR) "Digital advertising services" means providing 1135
access, by means of telecommunications equipment, to computer 1136
equipment that is used to enter, upload, download, review, 1137
manipulate, store, add, or delete data for the purpose of 1138
electronically displaying, delivering, placing, or transferring 1139
promotional advertisements to potential customers about products 1140
or services or about industry or business brands. 1141

(SSS) "Municipal gas utility" means a municipal 1142
corporation that owns or operates a system for the distribution 1143
of natural gas. 1144

Sec. 5739.02. For the purpose of providing revenue with 1145
which to meet the needs of the state, for the use of the general 1146
revenue fund of the state, for the purpose of securing a 1147
thorough and efficient system of common schools throughout the 1148
state, for the purpose of affording revenues, in addition to 1149
those from general property taxes, permitted under 1150
constitutional limitations, and from other sources, for the 1151
support of local governmental functions, and for the purpose of 1152

reimbursing the state for the expense of administering this 1153
chapter, an excise tax is hereby levied on each retail sale made 1154
in this state. 1155

(A) (1) The tax shall be collected as provided in section 1156
5739.025 of the Revised Code. The rate of the tax shall be five 1157
and three-fourths per cent. The tax applies and is collectible 1158
when the sale is made, regardless of the time when the price is 1159
paid or delivered. 1160

(2) In the case of the lease or rental, with a fixed term 1161
of more than thirty days or an indefinite term with a minimum 1162
period of more than thirty days, of any motor vehicles designed 1163
by the manufacturer to carry a load of not more than one ton, 1164
watercraft, outboard motor, or aircraft, or of any tangible 1165
personal property, other than motor vehicles designed by the 1166
manufacturer to carry a load of more than one ton, to be used by 1167
the lessee or renter primarily for business purposes, the tax 1168
shall be collected by the vendor at the time the lease or rental 1169
is consummated and shall be calculated by the vendor on the 1170
basis of the total amount to be paid by the lessee or renter 1171
under the lease agreement. If the total amount of the 1172
consideration for the lease or rental includes amounts that are 1173
not calculated at the time the lease or rental is executed, the 1174
tax shall be calculated and collected by the vendor at the time 1175
such amounts are billed to the lessee or renter. In the case of 1176
an open-end lease or rental, the tax shall be calculated by the 1177
vendor on the basis of the total amount to be paid during the 1178
initial fixed term of the lease or rental, and for each 1179
subsequent renewal period as it comes due. As used in this 1180
division, "motor vehicle" has the same meaning as in section 1181
4501.01 of the Revised Code, and "watercraft" includes an 1182
outdrive unit attached to the watercraft. 1183

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

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

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

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

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

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

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

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| (4) Sales of newspapers and sales or transfers of | 1213 |
| magazines distributed as controlled circulation publications; | 1214 |
| (5) The furnishing, preparing, or serving of meals without | 1215 |
| charge by an employer to an employee provided the employer | 1216 |
| records the meals as part compensation for services performed or | 1217 |
| work done; | 1218 |
| (6) Sales of motor fuel upon receipt, use, distribution, | 1219 |
| or sale of which in this state a tax is imposed by the law of | 1220 |
| this state, but this exemption shall not apply to the sale of | 1221 |
| motor fuel on which a refund of the tax is allowable under | 1222 |
| division (A) of section 5735.14 of the Revised Code; and the tax | 1223 |
| commissioner may deduct the amount of tax levied by this section | 1224 |
| applicable to the price of motor fuel when granting a refund of | 1225 |
| motor fuel tax pursuant to division (A) of section 5735.14 of | 1226 |
| the Revised Code and shall cause the amount deducted to be paid | 1227 |
| into the general revenue fund of this state; | 1228 |
| (7) Sales of natural gas by a natural gas company or | 1229 |
| municipal gas utility, of water by a water-works company, or of | 1230 |
| steam by a heating company, if in each case the thing sold is | 1231 |
| delivered to consumers through pipes or conduits, and all sales | 1232 |
| of communications services by a telegraph company, all terms as | 1233 |
| defined in section 5727.01 of the Revised Code, and sales of | 1234 |
| electricity delivered through wires; | 1235 |
| (8) Casual sales by a person, or auctioneer employed | 1236 |
| directly by the person to conduct such sales, except as to such | 1237 |
| sales of motor vehicles, watercraft or outboard motors required | 1238 |
| to be titled under section 1548.06 of the Revised Code, | 1239 |
| watercraft documented with the United States coast guard, | 1240 |
| snowmobiles, and all-purpose vehicles as defined in section | 1241 |
| 4519.01 of the Revised Code; | 1242 |

(9) (a) Sales of services or tangible personal property, 1243
other than motor vehicles, mobile homes, and manufactured homes, 1244
by churches, organizations exempt from taxation under section 1245
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1246
organizations operated exclusively for charitable purposes as 1247
defined in division (B) (12) of this section, provided that the 1248
number of days on which such tangible personal property or 1249
services, other than items never subject to the tax, are sold 1250
does not exceed six in any calendar year, except as otherwise 1251
provided in division (B) (9) (b) of this section. If the number of 1252
days on which such sales are made exceeds six in any calendar 1253
year, the church or organization shall be considered to be 1254
engaged in business and all subsequent sales by it shall be 1255
subject to the tax. In counting the number of days, all sales by 1256
groups within a church or within an organization shall be 1257
considered to be sales of that church or organization. 1258

(b) The limitation on the number of days on which tax- 1259
exempt sales may be made by a church or organization under 1260
division (B) (9) (a) of this section does not apply to sales made 1261
by student clubs and other groups of students of a primary or 1262
secondary school, or a parent-teacher association, booster 1263
group, or similar organization that raises money to support or 1264
fund curricular or extracurricular activities of a primary or 1265
secondary school. 1266

(c) Divisions (B) (9) (a) and (b) of this section do not 1267
apply to sales by a noncommercial educational radio or 1268
television broadcasting station. 1269

(10) Sales not within the taxing power of this state under 1270
the Constitution or laws of the United States or the 1271
Constitution of this state; 1272

(11) Except for transactions that are sales under division 1273
(B) (3) (r) of section 5739.01 of the Revised Code, the 1274
transportation of persons or property, unless the transportation 1275
is by a private investigation and security service; 1276

(12) Sales of tangible personal property or services to 1277
churches, to organizations exempt from taxation under section 1278
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1279
nonprofit organizations operated exclusively for charitable 1280
purposes in this state, no part of the net income of which 1281
inures to the benefit of any private shareholder or individual, 1282
and no substantial part of the activities of which consists of 1283
carrying on propaganda or otherwise attempting to influence 1284
legislation; sales to offices administering one or more homes 1285
for the aged or one or more hospital facilities exempt under 1286
section 140.08 of the Revised Code; and sales to organizations 1287
described in division (D) of section 5709.12 of the Revised 1288
Code. 1289

"Charitable purposes" means the relief of poverty; the 1290
improvement of health through the alleviation of illness, 1291
disease, or injury; the operation of an organization exclusively 1292
for the provision of professional, laundry, printing, and 1293
purchasing services to hospitals or charitable institutions; the 1294
operation of a home for the aged, as defined in section 5701.13 1295
of the Revised Code; the operation of a radio or television 1296
broadcasting station that is licensed by the federal 1297
communications commission as a noncommercial educational radio 1298
or television station; the operation of a nonprofit animal 1299
adoption service or a county humane society; the promotion of 1300
education by an institution of learning that maintains a faculty 1301
of qualified instructors, teaches regular continuous courses of 1302
study, and confers a recognized diploma upon completion of a 1303

specific curriculum; the operation of a parent-teacher 1304
association, booster group, or similar organization primarily 1305
engaged in the promotion and support of the curricular or 1306
extracurricular activities of a primary or secondary school; the 1307
operation of a community or area center in which presentations 1308
in music, dramatics, the arts, and related fields are made in 1309
order to foster public interest and education therein; the 1310
production of performances in music, dramatics, and the arts; or 1311
the promotion of education by an organization engaged in 1312
carrying on research in, or the dissemination of, scientific and 1313
technological knowledge and information primarily for the 1314
public. 1315

Nothing in this division shall be deemed to exempt sales 1316
to any organization for use in the operation or carrying on of a 1317
trade or business, or sales to a home for the aged for use in 1318
the operation of independent living facilities as defined in 1319
division (A) of section 5709.12 of the Revised Code. 1320

(13) Building and construction materials and services sold 1321
to construction contractors for incorporation into a structure 1322
or improvement to real property under a construction contract 1323
with this state or a political subdivision of this state, or 1324
with the United States government or any of its agencies; 1325
building and construction materials and services sold to 1326
construction contractors for incorporation into a structure or 1327
improvement to real property that are accepted for ownership by 1328
this state or any of its political subdivisions, or by the 1329
United States government or any of its agencies at the time of 1330
completion of the structures or improvements; building and 1331
construction materials sold to construction contractors for 1332
incorporation into a horticulture structure or livestock 1333
structure for a person engaged in the business of horticulture 1334

or producing livestock; building materials and services sold to 1335
a construction contractor for incorporation into a house of 1336
public worship or religious education, or a building used 1337
exclusively for charitable purposes under a construction 1338
contract with an organization whose purpose is as described in 1339
division (B) (12) of this section; building materials and 1340
services sold to a construction contractor for incorporation 1341
into a building under a construction contract with an 1342
organization exempt from taxation under section 501(c) (3) of the 1343
Internal Revenue Code of 1986 when the building is to be used 1344
exclusively for the organization's exempt purposes; building and 1345
construction materials sold for incorporation into the original 1346
construction of a sports facility under section 307.696 of the 1347
Revised Code; building and construction materials and services 1348
sold to a construction contractor for incorporation into real 1349
property outside this state if such materials and services, when 1350
sold to a construction contractor in the state in which the real 1351
property is located for incorporation into real property in that 1352
state, would be exempt from a tax on sales levied by that state; 1353
building and construction materials for incorporation into a 1354
transportation facility pursuant to a public-private agreement 1355
entered into under sections 5501.70 to 5501.83 of the Revised 1356
Code; and, until one calendar year after the construction of a 1357
convention center that qualifies for property tax exemption 1358
under section 5709.084 of the Revised Code is completed, 1359
building and construction materials and services sold to a 1360
construction contractor for incorporation into the real property 1361
comprising that convention center; 1362

(14) Sales of ships or vessels or rail rolling stock used 1363
or to be used principally in interstate or foreign commerce, and 1364
repairs, alterations, fuel, and lubricants for such ships or 1365

vessels or rail rolling stock; 1366

(15) Sales to persons primarily engaged in any of the 1367
activities mentioned in division (B) (42) (a), (g), or (h) of this 1368
section, to persons engaged in making retail sales, or to 1369
persons who purchase for sale from a manufacturer tangible 1370
personal property that was produced by the manufacturer in 1371
accordance with specific designs provided by the purchaser, of 1372
packages, including material, labels, and parts for packages, 1373
and of machinery, equipment, and material for use primarily in 1374
packaging tangible personal property produced for sale, 1375
including any machinery, equipment, and supplies used to make 1376
labels or packages, to prepare packages or products for 1377
labeling, or to label packages or products, by or on the order 1378
of the person doing the packaging, or sold at retail. "Packages" 1379
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1380
bindings, wrappings, and other similar devices and containers, 1381
but does not include motor vehicles or bulk tanks, trailers, or 1382
similar devices attached to motor vehicles. "Packaging" means 1383
placing in a package. Division (B) (15) of this section does not 1384
apply to persons engaged in highway transportation for hire. 1385

(16) Sales of food to persons using supplemental nutrition 1386
assistance program benefits to purchase the food. As used in 1387
this division, "food" has the same meaning as in 7 U.S.C. 2012 1388
and federal regulations adopted pursuant to the Food and 1389
Nutrition Act of 2008. 1390

(17) Sales to persons engaged in farming, agriculture, 1391
horticulture, or floriculture, of tangible personal property for 1392
use or consumption primarily in the production by farming, 1393
agriculture, horticulture, or floriculture of other tangible 1394
personal property for use or consumption primarily in the 1395

production of tangible personal property for sale by farming, 1396
agriculture, horticulture, or floriculture; or material and 1397
parts for incorporation into any such tangible personal property 1398
for use or consumption in production; and of tangible personal 1399
property for such use or consumption in the conditioning or 1400
holding of products produced by and for such use, consumption, 1401
or sale by persons engaged in farming, agriculture, 1402
horticulture, or floriculture, except where such property is 1403
incorporated into real property; 1404

(18) Sales of drugs for a human being that may be 1405
dispensed only pursuant to a prescription; insulin as recognized 1406
in the official United States pharmacopoeia; urine and blood 1407
testing materials when used by diabetics or persons with 1408
hypoglycemia to test for glucose or acetone; hypodermic syringes 1409
and needles when used by diabetics for insulin injections; 1410
epoetin alfa when purchased for use in the treatment of persons 1411
with medical disease; hospital beds when purchased by hospitals, 1412
nursing homes, or other medical facilities; and medical oxygen 1413
and medical oxygen-dispensing equipment when purchased by 1414
hospitals, nursing homes, or other medical facilities; 1415

(19) Sales of prosthetic devices, durable medical 1416
equipment for home use, or mobility enhancing equipment, when 1417
made pursuant to a prescription and when such devices or 1418
equipment are for use by a human being. 1419

(20) Sales of emergency and fire protection vehicles and 1420
equipment to nonprofit organizations for use solely in providing 1421
fire protection and emergency services, including trauma care 1422
and emergency medical services, for political subdivisions of 1423
the state; 1424

(21) Sales of tangible personal property manufactured in 1425

this state, if sold by the manufacturer in this state to a 1426
retailer for use in the retail business of the retailer outside 1427
of this state and if possession is taken from the manufacturer 1428
by the purchaser within this state for the sole purpose of 1429
immediately removing the same from this state in a vehicle owned 1430
by the purchaser; 1431

(22) Sales of services provided by the state or any of its 1432
political subdivisions, agencies, instrumentalities, 1433
institutions, or authorities, or by governmental entities of the 1434
state or any of its political subdivisions, agencies, 1435
instrumentalities, institutions, or authorities; 1436

(23) Sales of motor vehicles to nonresidents of this state 1437
under the circumstances described in division (B) of section 1438
5739.029 of the Revised Code; 1439

(24) Sales to persons engaged in the preparation of eggs 1440
for sale of tangible personal property used or consumed directly 1441
in such preparation, including such tangible personal property 1442
used for cleaning, sanitizing, preserving, grading, sorting, and 1443
classifying by size; packages, including material and parts for 1444
packages, and machinery, equipment, and material for use in 1445
packaging eggs for sale; and handling and transportation 1446
equipment and parts therefor, except motor vehicles licensed to 1447
operate on public highways, used in intraplant or interplant 1448
transfers or shipment of eggs in the process of preparation for 1449
sale, when the plant or plants within or between which such 1450
transfers or shipments occur are operated by the same person. 1451
"Packages" includes containers, cases, baskets, flats, fillers, 1452
filler flats, cartons, closure materials, labels, and labeling 1453
materials, and "packaging" means placing therein. 1454

(25) (a) Sales of water to a consumer for residential use; 1455

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| (b) Sales of water by a nonprofit corporation engaged | 1456 |
| exclusively in the treatment, distribution, and sale of water to | 1457 |
| consumers, if such water is delivered to consumers through pipes | 1458 |
| or tubing. | 1459 |
| (26) Fees charged for inspection or reinspection of motor | 1460 |
| vehicles under section 3704.14 of the Revised Code; | 1461 |
| (27) Sales to persons licensed to conduct a food service | 1462 |
| operation pursuant to section 3717.43 of the Revised Code, of | 1463 |
| tangible personal property primarily used directly for the | 1464 |
| following: | 1465 |
| (a) To prepare food for human consumption for sale; | 1466 |
| (b) To preserve food that has been or will be prepared for | 1467 |
| human consumption for sale by the food service operator, not | 1468 |
| including tangible personal property used to display food for | 1469 |
| selection by the consumer; | 1470 |
| (c) To clean tangible personal property used to prepare or | 1471 |
| serve food for human consumption for sale. | 1472 |
| (28) Sales of animals by nonprofit animal adoption | 1473 |
| services or county humane societies; | 1474 |
| (29) Sales of services to a corporation described in | 1475 |
| division (A) of section 5709.72 of the Revised Code, and sales | 1476 |
| of tangible personal property that qualifies for exemption from | 1477 |
| taxation under section 5709.72 of the Revised Code; | 1478 |
| (30) Sales and installation of agricultural land tile, as | 1479 |
| defined in division (B) (5) (a) of section 5739.01 of the Revised | 1480 |
| Code; | 1481 |
| (31) Sales and erection or installation of portable grain | 1482 |
| bins, as defined in division (B) (5) (b) of section 5739.01 of the | 1483 |

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| Revised Code; | 1484 |
| (32) The sale, lease, repair, and maintenance of, parts | 1485 |
| for, or items attached to or incorporated in, motor vehicles | 1486 |
| that are primarily used for transporting tangible personal | 1487 |
| property belonging to others by a person engaged in highway | 1488 |
| transportation for hire, except for packages and packaging used | 1489 |
| for the transportation of tangible personal property; | 1490 |
| (33) Sales to the state headquarters of any veterans' | 1491 |
| organization in this state that is either incorporated and | 1492 |
| issued a charter by the congress of the United States or is | 1493 |
| recognized by the United States veterans administration, for use | 1494 |
| by the headquarters; | 1495 |
| (34) Sales to a telecommunications service vendor, mobile | 1496 |
| telecommunications service vendor, or satellite broadcasting | 1497 |
| service vendor of tangible personal property and services used | 1498 |
| directly and primarily in transmitting, receiving, switching, or | 1499 |
| recording any interactive, one- or two-way electromagnetic | 1500 |
| communications, including voice, image, data, and information, | 1501 |
| through the use of any medium, including, but not limited to, | 1502 |
| poles, wires, cables, switching equipment, computers, and record | 1503 |
| storage devices and media, and component parts for the tangible | 1504 |
| personal property. The exemption provided in this division shall | 1505 |
| be in lieu of all other exemptions under division (B) (42) (a) or | 1506 |
| (n) of this section to which the vendor may otherwise be | 1507 |
| entitled, based upon the use of the thing purchased in providing | 1508 |
| the telecommunications, mobile telecommunications, or satellite | 1509 |
| broadcasting service. | 1510 |
| (35) (a) Sales where the purpose of the consumer is to use | 1511 |
| or consume the things transferred in making retail sales and | 1512 |
| consisting of newspaper inserts, catalogues, coupons, flyers, | 1513 |

gift certificates, or other advertising material that prices and 1514
describes tangible personal property offered for retail sale. 1515

(b) Sales to direct marketing vendors of preliminary 1516
materials such as photographs, artwork, and typesetting that 1517
will be used in printing advertising material; and of printed 1518
matter that offers free merchandise or chances to win sweepstake 1519
prizes and that is mailed to potential customers with 1520
advertising material described in division (B) (35) (a) of this 1521
section; 1522

(c) Sales of equipment such as telephones, computers, 1523
facsimile machines, and similar tangible personal property 1524
primarily used to accept orders for direct marketing retail 1525
sales. 1526

(d) Sales of automatic food vending machines that preserve 1527
food with a shelf life of forty-five days or less by 1528
refrigeration and dispense it to the consumer. 1529

For purposes of division (B) (35) of this section, "direct 1530
marketing" means the method of selling where consumers order 1531
tangible personal property by United States mail, delivery 1532
service, or telecommunication and the vendor delivers or ships 1533
the tangible personal property sold to the consumer from a 1534
warehouse, catalogue distribution center, or similar fulfillment 1535
facility by means of the United States mail, delivery service, 1536
or common carrier. 1537

(36) Sales to a person engaged in the business of 1538
horticulture or producing livestock of materials to be 1539
incorporated into a horticulture structure or livestock 1540
structure; 1541

(37) Sales of personal computers, computer monitors, 1542

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| computer keyboards, modems, and other peripheral computer | 1543 |
| equipment to an individual who is licensed or certified to teach | 1544 |
| in an elementary or a secondary school in this state for use by | 1545 |
| that individual in preparation for teaching elementary or | 1546 |
| secondary school students; | 1547 |
| (38) Sales to a professional racing team of any of the | 1548 |
| following: | 1549 |
| (a) Motor racing vehicles; | 1550 |
| (b) Repair services for motor racing vehicles; | 1551 |
| (c) Items of property that are attached to or incorporated | 1552 |
| in motor racing vehicles, including engines, chassis, and all | 1553 |
| other components of the vehicles, and all spare, replacement, | 1554 |
| and rebuilt parts or components of the vehicles; except not | 1555 |
| including tires, consumable fluids, paint, and accessories | 1556 |
| consisting of instrumentation sensors and related items added to | 1557 |
| the vehicle to collect and transmit data by means of telemetry | 1558 |
| and other forms of communication. | 1559 |
| (39) Sales of used manufactured homes and used mobile | 1560 |
| homes, as defined in section 5739.0210 of the Revised Code, made | 1561 |
| on or after January 1, 2000; | 1562 |
| (40) Sales of tangible personal property and services to a | 1563 |
| provider of electricity used or consumed directly and primarily | 1564 |
| in generating, transmitting, or distributing electricity for use | 1565 |
| by others, including property that is or is to be incorporated | 1566 |
| into and will become a part of the consumer's production, | 1567 |
| transmission, or distribution system and that retains its | 1568 |
| classification as tangible personal property after | 1569 |
| incorporation; fuel or power used in the production, | 1570 |
| transmission, or distribution of electricity; energy conversion | 1571 |

equipment as defined in section 5727.01 of the Revised Code; and 1572
tangible personal property and services used in the repair and 1573
maintenance of the production, transmission, or distribution 1574
system, including only those motor vehicles as are specially 1575
designed and equipped for such use. The exemption provided in 1576
this division shall be in lieu of all other exemptions in 1577
division (B) (42) (a) or (n) of this section to which a provider 1578
of electricity may otherwise be entitled based on the use of the 1579
tangible personal property or service purchased in generating, 1580
transmitting, or distributing electricity. 1581

(41) Sales to a person providing services under division 1582
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 1583
personal property and services used directly and primarily in 1584
providing taxable services under that section. 1585

(42) Sales where the purpose of the purchaser is to do any 1586
of the following: 1587

(a) To incorporate the thing transferred as a material or 1588
a part into tangible personal property to be produced for sale 1589
by manufacturing, assembling, processing, or refining; or to use 1590
or consume the thing transferred directly in producing tangible 1591
personal property for sale by mining, including, without 1592
limitation, the extraction from the earth of all substances that 1593
are classed geologically as minerals, production of crude oil 1594
and natural gas, or directly in the rendition of a public 1595
utility service, except that the sales tax levied by this 1596
section shall be collected upon all meals, drinks, and food for 1597
human consumption sold when transporting persons. Persons 1598
engaged in rendering services in the exploration for, and 1599
production of, crude oil and natural gas for others are deemed 1600
engaged directly in the exploration for, and production of, 1601

crude oil and natural gas. This paragraph does not exempt from 1602
"retail sale" or "sales at retail" the sale of tangible personal 1603
property that is to be incorporated into a structure or 1604
improvement to real property. 1605

(b) To hold the thing transferred as security for the 1606
performance of an obligation of the vendor; 1607

(c) To resell, hold, use, or consume the thing transferred 1608
as evidence of a contract of insurance; 1609

(d) To use or consume the thing directly in commercial 1610
fishing; 1611

(e) To incorporate the thing transferred as a material or 1612
a part into, or to use or consume the thing transferred directly 1613
in the production of, magazines distributed as controlled 1614
circulation publications; 1615

(f) To use or consume the thing transferred in the 1616
production and preparation in suitable condition for market and 1617
sale of printed, imprinted, overprinted, lithographic, 1618
multilithic, blueprinted, photostatic, or other productions or 1619
reproductions of written or graphic matter; 1620

(g) To use the thing transferred, as described in section 1621
5739.011 of the Revised Code, primarily in a manufacturing 1622
operation to produce tangible personal property for sale; 1623

(h) To use the benefit of a warranty, maintenance or 1624
service contract, or similar agreement, as described in division 1625
(B) (7) of section 5739.01 of the Revised Code, to repair or 1626
maintain tangible personal property, if all of the property that 1627
is the subject of the warranty, contract, or agreement would not 1628
be subject to the tax imposed by this section; 1629

- (i) To use the thing transferred as qualified research and development equipment; 1630
1631
- (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. 1632
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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; 1645
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- (l) To use or consume the thing transferred in the production of a newspaper for distribution to the public; 1652
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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; 1654
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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 1688
engines, airframes, instruments, and interiors in, and paint 1689
for, aircraft used primarily in a fractional aircraft ownership 1690
program, and sales of services for the repair, modification, and 1691
maintenance of such aircraft, and machinery, equipment, and 1692
supplies primarily used to provide those services. 1693

(45) Sales of telecommunications service that is used 1694
directly and primarily to perform the functions of a call 1695
center. As used in this division, "call center" means any 1696
physical location where telephone calls are placed or received 1697
in high volume for the purpose of making sales, marketing, 1698
customer service, technical support, or other specialized 1699
business activity, and that employs at least fifty individuals 1700
that engage in call center activities on a full-time basis, or 1701
sufficient individuals to fill fifty full-time equivalent 1702
positions. 1703

(46) Sales by a telecommunications service vendor of 900 1704
service to a subscriber. This division does not apply to 1705
information services, as defined in division (FF) of section 1706
5739.01 of the Revised Code. 1707

(47) Sales of value-added non-voice data service. This 1708
division does not apply to any similar service that is not 1709
otherwise a telecommunications service. 1710

(48) (a) Sales of machinery, equipment, and software to a 1711
qualified direct selling entity for use in a warehouse or 1712
distribution center primarily for storing, transporting, or 1713
otherwise handling inventory that is held for sale to 1714
independent salespersons who operate as direct sellers and that 1715
is held primarily for distribution outside this state; 1716

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| (b) As used in division (B) (48) (a) of this section: | 1717 |
| (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. | 1718 1719 1720 1721 1722 |
| (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. | 1723 1724 1725 1726 1727 1728 1729 1730 1731 1732 |
| (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. | 1733 1734 1735 1736 |
| (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. | 1737 1738 1739 1740 1741 1742 1743 1744 |
| (50) Sales of full flight simulators that are used for | 1745 |

pilot or flight-crew training, sales of repair or replacement 1746
parts or components, and sales of repair or maintenance services 1747
for such full flight simulators. "Full flight simulator" means a 1748
replica of a specific type, or make, model, and series of 1749
aircraft cockpit. It includes the assemblage of equipment and 1750
computer programs necessary to represent aircraft operations in 1751
ground and flight conditions, a visual system providing an out- 1752
of-the-cockpit view, and a system that provides cues at least 1753
equivalent to those of a three-degree-of-freedom motion system, 1754
and has the full range of capabilities of the systems installed 1755
in the device as described in appendices A and B of part 60 of 1756
chapter 1 of title 14 of the Code of Federal Regulations. 1757

(51) Any transfer or lease of tangible personal property 1758
between the state and JobsOhio in accordance with section 1759
4313.02 of the Revised Code. 1760

(52) (a) Sales to a qualifying corporation. 1761

(b) As used in division (B) (52) of this section: 1762

(i) "Qualifying corporation" means a nonprofit corporation 1763
organized in this state that leases from an eligible county 1764
land, buildings, structures, fixtures, and improvements to the 1765
land that are part of or used in a public recreational facility 1766
used by a major league professional athletic team or a class A 1767
to class AAA minor league affiliate of a major league 1768
professional athletic team for a significant portion of the 1769
team's home schedule, provided the following apply: 1770

(I) The facility is leased from the eligible county 1771
pursuant to a lease that requires substantially all of the 1772
revenue from the operation of the business or activity conducted 1773
by the nonprofit corporation at the facility in excess of 1774

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| operating costs, capital expenditures, and reserves to be paid | 1775 |
| to the eligible county at least once per calendar year. | 1776 |
| (II) Upon dissolution and liquidation of the nonprofit | 1777 |
| corporation, all of its net assets are distributable to the | 1778 |
| board of commissioners of the eligible county from which the | 1779 |
| corporation leases the facility. | 1780 |
| (ii) "Eligible county" has the same meaning as in section | 1781 |
| 307.695 of the Revised Code. | 1782 |
| (53) Sales to or by a cable service provider, video | 1783 |
| service provider, or radio or television broadcast station | 1784 |
| regulated by the federal government of cable service or | 1785 |
| programming, video service or programming, audio service or | 1786 |
| programming, or electronically transferred digital audiovisual | 1787 |
| or audio work. As used in division (B) (53) of this section, | 1788 |
| "cable service" and "cable service provider" have the same | 1789 |
| meanings as in section 1332.01 of the Revised Code, and "video | 1790 |
| service," "video service provider," and "video programming" have | 1791 |
| the same meanings as in section 1332.21 of the Revised Code. | 1792 |
| (54) Sales of investment metal bullion and investment | 1793 |
| coins. "Investment metal bullion" means any bullion described in | 1794 |
| section 408(m) (3) (B) of the Internal Revenue Code, regardless of | 1795 |
| whether that bullion is in the physical possession of a trustee. | 1796 |
| "Investment coin" means any coin composed primarily of gold, | 1797 |
| silver, platinum, or palladium. | 1798 |
| <u>(55) (a) On and after July 1, 2019, sales of optical aids</u> | 1799 |
| <u>or components thereof by a vendor licensed under Chapter 4725.</u> | 1800 |
| <u>or 4731. of the Revised Code or otherwise authorized to dispense</u> | 1801 |
| <u>optical aids or components under the laws of another state,</u> | 1802 |
| <u>country, or province.</u> | 1803 |

(b) As used in division (B) (55) of this section: 1804

(i) "Optical aid" means eyeglasses, contact lenses, or 1805
other instruments or devices that may aid or correct human 1806
vision and that have been prescribed by a physician or 1807
optometrist licensed by any state, country, or province; 1808

(ii) "Eyeglasses" includes lenses and frames into which 1809
lenses have been installed if the lenses have been prescribed by 1810
a physician or optometrist licensed by any state, country, or 1811
province. 1812

(C) For the purpose of the proper administration of this 1813
chapter, and to prevent the evasion of the tax, it is presumed 1814
that all sales made in this state are subject to the tax until 1815
the contrary is established. 1816

(D) The levy of this tax on retail sales of recreation and 1817
sports club service shall not prevent a municipal corporation 1818
from levying any tax on recreation and sports club dues or on 1819
any income generated by recreation and sports club dues. 1820

(E) The tax collected by the vendor from the consumer 1821
under this chapter is not part of the price, but is a tax 1822
collection for the benefit of the state, and of counties levying 1823
an additional sales tax pursuant to section 5739.021 or 5739.026 1824
of the Revised Code and of transit authorities levying an 1825
additional sales tax pursuant to section 5739.023 of the Revised 1826
Code. Except for the discount authorized under section 5739.12 1827
of the Revised Code and the effects of any rounding pursuant to 1828
section 5703.055 of the Revised Code, no person other than the 1829
state or such a county or transit authority shall derive any 1830
benefit from the collection or payment of the tax levied by this 1831
section or section 5739.021, 5739.023, or 5739.026 of the 1832

Revised Code. 1833

Section 2. That existing sections 5739.01 and 5739.02 of 1834
the Revised Code are hereby repealed. 1835

Section 3. Section 5739.01 of the Revised Code is 1836
presented in this act as a composite of the section as amended 1837
by both Sub. H.B. 390 and H.B. 466 of the 132nd General 1838
Assembly. The General Assembly, applying the principle stated in 1839
division (B) of section 1.52 of the Revised Code that amendments 1840
are to be harmonized if reasonably capable of simultaneous 1841
operation, finds that the composite is the resulting version of 1842
the section in effect prior to the effective date of the section 1843
as presented in this act. 1844

Section 5739.02 of the Revised Code is presented in this 1845
act as a composite of the section as amended by Am. Sub. H.B. 1846
64, Sub. H.B. 390, and Sub. S.B. 172, all of the 132nd General 1847
Assembly. The General Assembly, applying the principle stated in 1848
division (B) of section 1.52 of the Revised Code that amendments 1849
are to be harmonized if reasonably capable of simultaneous 1850
operation, finds that the composite is the resulting version of 1851
the section in effect prior to the effective date of the section 1852
as presented in this act. 1853