

As Introduced

132nd General Assembly

Regular Session

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H. B. No. 243

Representatives Patterson, Cera

**Cosponsors: Representatives Lepore-Hagan, Boggs, Antani, O'Brien, West, Miller,
Bocchieri**

A BILL

To amend sections 131.51 and 5739.02 and to enact 1
sections 5739.212 and 5741.033 of the Revised 2
Code to exempt from sales and use taxation the 3
bulk sale of firewood and certain other heating 4
fuels, and to reimburse the Local Government 5
Fund and Public Library Fund and county and 6
transit sales tax collections for the resulting 7
revenue losses. 8

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

Section 1. That sections 131.51 and 5739.02 be amended and 9
sections 5739.212 and 5741.033 of the Revised Code be enacted to 10
read as follows: 11

Sec. 131.51. (A) On or before July 5, 2013, the tax 12
commissioner shall compute the following amounts and certify 13
those amounts to the director of budget and management: 14

(1) A percentage calculated by multiplying one hundred by 15
the quotient obtained by dividing the total amount credited to 16
the local government fund in fiscal year 2013 by the total 17

amount of tax revenue credited to the general revenue fund in 18
fiscal year 2013. The percentage shall be rounded to the nearest 19
one-hundredth of one per cent. 20

(2) A percentage calculated by multiplying one hundred by 21
the quotient obtained by dividing the total amount credited to 22
the public library fund in fiscal year 2013 by the total amount 23
of tax revenue credited to the general revenue fund in fiscal 24
year 2013. The percentage shall be rounded to the nearest one- 25
hundredth of one per cent. 26

(B) On or before the seventh day of each month, the 27
director of budget and management shall credit to the local 28
government fund an amount equal to the product obtained by 29
multiplying the percentage calculated under division (A) (1) of 30
this section by the sum of the total tax revenue credited to the 31
general revenue fund during the preceding month plus the 32
supplemental distribution. In determining the total tax revenue 33
credited to the general revenue fund during the preceding month, 34
the director shall include amounts transferred from the fund 35
during the preceding month under this division and division (C) 36
of this section. Money shall be distributed from the local 37
government fund as required under section 5747.50 of the Revised 38
Code during the same month in which it is credited to the fund. 39

(C) On or before the seventh day of each month, the 40
director of budget and management shall credit to the public 41
library fund an amount equal to the product obtained by 42
multiplying the percentage calculated under division (A) (2) of 43
this section by the sum of the total tax revenue credited to the 44
general revenue fund during the preceding month plus the 45
supplemental distribution. In determining the total tax revenue 46
credited to the general revenue fund during the preceding month, 47

the director shall include amounts transferred from the fund 48
during the preceding month under this division and division (B) 49
of this section. Money shall be distributed from the public 50
library fund as required under section 5747.47 of the Revised 51
Code during the same month in which it is credited to the fund. 52

(D) The director of budget and management shall develop a 53
schedule identifying the specific tax revenue sources to be used 54
to make the monthly transfers required under divisions (B) and 55
(C) of this section. The director may, from time to time, revise 56
the schedule as the director considers necessary. 57

(E) As used in this section, "supplemental distribution" 58
means the difference obtained by subtracting the total tax 59
revenue credited to the general revenue fund during the 60
preceding month from the amount of such revenue the commissioner 61
estimates would have been credited to that fund during that 62
month if sections 131.51 and 5739.02 of the Revised Code had not 63
been amended by ...B... of the 132nd general assembly. 64

Sec. 5739.02. For the purpose of providing revenue with 65
which to meet the needs of the state, for the use of the general 66
revenue fund of the state, for the purpose of securing a 67
thorough and efficient system of common schools throughout the 68
state, for the purpose of affording revenues, in addition to 69
those from general property taxes, permitted under 70
constitutional limitations, and from other sources, for the 71
support of local governmental functions, and for the purpose of 72
reimbursing the state for the expense of administering this 73
chapter, an excise tax is hereby levied on each retail sale made 74
in this state. 75

(A) (1) The tax shall be collected as provided in section 76
5739.025 of the Revised Code. The rate of the tax shall be five 77

and three-fourths per cent. The tax applies and is collectible 78
when the sale is made, regardless of the time when the price is 79
paid or delivered. 80

(2) In the case of the lease or rental, with a fixed term 81
of more than thirty days or an indefinite term with a minimum 82
period of more than thirty days, of any motor vehicles designed 83
by the manufacturer to carry a load of not more than one ton, 84
watercraft, outboard motor, or aircraft, or of any tangible 85
personal property, other than motor vehicles designed by the 86
manufacturer to carry a load of more than one ton, to be used by 87
the lessee or renter primarily for business purposes, the tax 88
shall be collected by the vendor at the time the lease or rental 89
is consummated and shall be calculated by the vendor on the 90
basis of the total amount to be paid by the lessee or renter 91
under the lease agreement. If the total amount of the 92
consideration for the lease or rental includes amounts that are 93
not calculated at the time the lease or rental is executed, the 94
tax shall be calculated and collected by the vendor at the time 95
such amounts are billed to the lessee or renter. In the case of 96
an open-end lease or rental, the tax shall be calculated by the 97
vendor on the basis of the total amount to be paid during the 98
initial fixed term of the lease or rental, and for each 99
subsequent renewal period as it comes due. As used in this 100
division, "motor vehicle" has the same meaning as in section 101
4501.01 of the Revised Code, and "watercraft" includes an 102
outdrive unit attached to the watercraft. 103

A lease with a renewal clause and a termination penalty or 104
similar provision that applies if the renewal clause is not 105
exercised is presumed to be a sham transaction. In such a case, 106
the tax shall be calculated and paid on the basis of the entire 107
length of the lease period, including any renewal periods, until 108

the termination penalty or similar provision no longer applies. 109
The taxpayer shall bear the burden, by a preponderance of the 110
evidence, that the transaction or series of transactions is not 111
a sham transaction. 112

(3) Except as provided in division (A)(2) of this section, 113
in the case of a sale, the price of which consists in whole or 114
in part of the lease or rental of tangible personal property, 115
the tax shall be measured by the installments of that lease or 116
rental. 117

(4) In the case of a sale of a physical fitness facility 118
service or recreation and sports club service, the price of 119
which consists in whole or in part of a membership for the 120
receipt of the benefit of the service, the tax applicable to the 121
sale shall be measured by the installments thereof. 122

(B) The tax does not apply to the following: 123

(1) Sales to the state or any of its political 124
subdivisions, or to any other state or its political 125
subdivisions if the laws of that state exempt from taxation 126
sales made to this state and its political subdivisions; 127

(2) Sales of food for human consumption off the premises 128
where sold; 129

(3) Sales of food sold to students only in a cafeteria, 130
dormitory, fraternity, or sorority maintained in a private, 131
public, or parochial school, college, or university; 132

(4) Sales of newspapers and sales or transfers of 133
magazines distributed as controlled circulation publications; 134

(5) The furnishing, preparing, or serving of meals without 135
charge by an employer to an employee provided the employer 136

records the meals as part compensation for services performed or 137
work done; 138

(6) Sales of motor fuel upon receipt, use, distribution, 139
or sale of which in this state a tax is imposed by the law of 140
this state, but this exemption shall not apply to the sale of 141
motor fuel on which a refund of the tax is allowable under 142
division (A) of section 5735.14 of the Revised Code; and the tax 143
commissioner may deduct the amount of tax levied by this section 144
applicable to the price of motor fuel when granting a refund of 145
motor fuel tax pursuant to division (A) of section 5735.14 of 146
the Revised Code and shall cause the amount deducted to be paid 147
into the general revenue fund of this state; 148

(7) Sales of natural gas by a natural gas company or 149
municipal gas utility, of water by a water-works company, or of 150
steam by a heating company, if in each case the thing sold is 151
delivered to consumers through pipes or conduits, and all sales 152
of communications services by a telegraph company, all terms as 153
defined in section 5727.01 of the Revised Code, and sales of 154
electricity delivered through wires; 155

(8) Casual sales by a person, or auctioneer employed 156
directly by the person to conduct such sales, except as to such 157
sales of motor vehicles, watercraft or outboard motors required 158
to be titled under section 1548.06 of the Revised Code, 159
watercraft documented with the United States coast guard, 160
snowmobiles, and all-purpose vehicles as defined in section 161
4519.01 of the Revised Code; 162

(9) (a) Sales of services or tangible personal property, 163
other than motor vehicles, mobile homes, and manufactured homes, 164
by churches, organizations exempt from taxation under section 165
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 166

organizations operated exclusively for charitable purposes as 167
defined in division (B) (12) of this section, provided that the 168
number of days on which such tangible personal property or 169
services, other than items never subject to the tax, are sold 170
does not exceed six in any calendar year, except as otherwise 171
provided in division (B) (9) (b) of this section. If the number of 172
days on which such sales are made exceeds six in any calendar 173
year, the church or organization shall be considered to be 174
engaged in business and all subsequent sales by it shall be 175
subject to the tax. In counting the number of days, all sales by 176
groups within a church or within an organization shall be 177
considered to be sales of that church or organization. 178

(b) The limitation on the number of days on which tax- 179
exempt sales may be made by a church or organization under 180
division (B) (9) (a) of this section does not apply to sales made 181
by student clubs and other groups of students of a primary or 182
secondary school, or a parent-teacher association, booster 183
group, or similar organization that raises money to support or 184
fund curricular or extracurricular activities of a primary or 185
secondary school. 186

(c) Divisions (B) (9) (a) and (b) of this section do not 187
apply to sales by a noncommercial educational radio or 188
television broadcasting station. 189

(10) Sales not within the taxing power of this state under 190
the Constitution or laws of the United States or the 191
Constitution of this state; 192

(11) Except for transactions that are sales under division 193
(B) (3) (r) of section 5739.01 of the Revised Code, the 194
transportation of persons or property, unless the transportation 195
is by a private investigation and security service; 196

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

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the

operation of a community or area center in which presentations 228
in music, dramatics, the arts, and related fields are made in 229
order to foster public interest and education therein; the 230
production of performances in music, dramatics, and the arts; or 231
the promotion of education by an organization engaged in 232
carrying on research in, or the dissemination of, scientific and 233
technological knowledge and information primarily for the 234
public. 235

Nothing in this division shall be deemed to exempt sales 236
to any organization for use in the operation or carrying on of a 237
trade or business, or sales to a home for the aged for use in 238
the operation of independent living facilities as defined in 239
division (A) of section 5709.12 of the Revised Code. 240

(13) Building and construction materials and services sold 241
to construction contractors for incorporation into a structure 242
or improvement to real property under a construction contract 243
with this state or a political subdivision of this state, or 244
with the United States government or any of its agencies; 245
building and construction materials and services sold to 246
construction contractors for incorporation into a structure or 247
improvement to real property that are accepted for ownership by 248
this state or any of its political subdivisions, or by the 249
United States government or any of its agencies at the time of 250
completion of the structures or improvements; building and 251
construction materials sold to construction contractors for 252
incorporation into a horticulture structure or livestock 253
structure for a person engaged in the business of horticulture 254
or producing livestock; building materials and services sold to 255
a construction contractor for incorporation into a house of 256
public worship or religious education, or a building used 257
exclusively for charitable purposes under a construction 258

contract with an organization whose purpose is as described in 259
division (B) (12) of this section; building materials and 260
services sold to a construction contractor for incorporation 261
into a building under a construction contract with an 262
organization exempt from taxation under section 501(c) (3) of the 263
Internal Revenue Code of 1986 when the building is to be used 264
exclusively for the organization's exempt purposes; building and 265
construction materials sold for incorporation into the original 266
construction of a sports facility under section 307.696 of the 267
Revised Code; building and construction materials and services 268
sold to a construction contractor for incorporation into real 269
property outside this state if such materials and services, when 270
sold to a construction contractor in the state in which the real 271
property is located for incorporation into real property in that 272
state, would be exempt from a tax on sales levied by that state; 273
building and construction materials for incorporation into a 274
transportation facility pursuant to a public-private agreement 275
entered into under sections 5501.70 to 5501.83 of the Revised 276
Code; and, until one calendar year after the construction of a 277
convention center that qualifies for property tax exemption 278
under section 5709.084 of the Revised Code is completed, 279
building and construction materials and services sold to a 280
construction contractor for incorporation into the real property 281
comprising that convention center; 282

(14) Sales of ships or vessels or rail rolling stock used 283
or to be used principally in interstate or foreign commerce, and 284
repairs, alterations, fuel, and lubricants for such ships or 285
vessels or rail rolling stock; 286

(15) Sales to persons primarily engaged in any of the 287
activities mentioned in division (B) (42) (a), (g), or (h) of this 288
section, to persons engaged in making retail sales, or to 289

persons who purchase for sale from a manufacturer tangible 290
personal property that was produced by the manufacturer in 291
accordance with specific designs provided by the purchaser, of 292
packages, including material, labels, and parts for packages, 293
and of machinery, equipment, and material for use primarily in 294
packaging tangible personal property produced for sale, 295
including any machinery, equipment, and supplies used to make 296
labels or packages, to prepare packages or products for 297
labeling, or to label packages or products, by or on the order 298
of the person doing the packaging, or sold at retail. "Packages" 299
includes bags, baskets, cartons, crates, boxes, cans, bottles, 300
bindings, wrappings, and other similar devices and containers, 301
but does not include motor vehicles or bulk tanks, trailers, or 302
similar devices attached to motor vehicles. "Packaging" means 303
placing in a package. Division (B) (15) of this section does not 304
apply to persons engaged in highway transportation for hire. 305

(16) Sales of food to persons using supplemental nutrition 306
assistance program benefits to purchase the food. As used in 307
this division, "food" has the same meaning as in 7 U.S.C. 2012 308
and federal regulations adopted pursuant to the Food and 309
Nutrition Act of 2008. 310

(17) Sales to persons engaged in farming, agriculture, 311
horticulture, or floriculture, of tangible personal property for 312
use or consumption primarily in the production by farming, 313
agriculture, horticulture, or floriculture of other tangible 314
personal property for use or consumption primarily in the 315
production of tangible personal property for sale by farming, 316
agriculture, horticulture, or floriculture; or material and 317
parts for incorporation into any such tangible personal property 318
for use or consumption in production; and of tangible personal 319
property for such use or consumption in the conditioning or 320

holding of products produced by and for such use, consumption, 321
or sale by persons engaged in farming, agriculture, 322
horticulture, or floriculture, except where such property is 323
incorporated into real property; 324

(18) Sales of drugs for a human being that may be 325
dispensed only pursuant to a prescription; insulin as recognized 326
in the official United States pharmacopoeia; urine and blood 327
testing materials when used by diabetics or persons with 328
hypoglycemia to test for glucose or acetone; hypodermic syringes 329
and needles when used by diabetics for insulin injections; 330
epoetin alfa when purchased for use in the treatment of persons 331
with medical disease; hospital beds when purchased by hospitals, 332
nursing homes, or other medical facilities; and medical oxygen 333
and medical oxygen-dispensing equipment when purchased by 334
hospitals, nursing homes, or other medical facilities; 335

(19) Sales of prosthetic devices, durable medical 336
equipment for home use, or mobility enhancing equipment, when 337
made pursuant to a prescription and when such devices or 338
equipment are for use by a human being. 339

(20) Sales of emergency and fire protection vehicles and 340
equipment to nonprofit organizations for use solely in providing 341
fire protection and emergency services, including trauma care 342
and emergency medical services, for political subdivisions of 343
the state; 344

(21) Sales of tangible personal property manufactured in 345
this state, if sold by the manufacturer in this state to a 346
retailer for use in the retail business of the retailer outside 347
of this state and if possession is taken from the manufacturer 348
by the purchaser within this state for the sole purpose of 349
immediately removing the same from this state in a vehicle owned 350

by the purchaser;	351
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	352 353 354 355 356
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	357 358 359
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.	360 361 362 363 364 365 366 367 368 369 370 371 372 373 374
(25) (a) Sales of water to a consumer for residential use;	375
(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	376 377 378 379

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	380 381
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	382 383 384 385
(a) To prepare food for human consumption for sale;	386
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	387 388 389 390
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	391 392
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	393 394
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	395 396 397 398
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	399 400 401
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;	402 403 404
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal	405 406 407

property belonging to others by a person engaged in highway 408
transportation for hire, except for packages and packaging used 409
for the transportation of tangible personal property; 410

(33) Sales to the state headquarters of any veterans' 411
organization in this state that is either incorporated and 412
issued a charter by the congress of the United States or is 413
recognized by the United States veterans administration, for use 414
by the headquarters; 415

(34) Sales to a telecommunications service vendor, mobile 416
telecommunications service vendor, or satellite broadcasting 417
service vendor of tangible personal property and services used 418
directly and primarily in transmitting, receiving, switching, or 419
recording any interactive, one- or two-way electromagnetic 420
communications, including voice, image, data, and information, 421
through the use of any medium, including, but not limited to, 422
poles, wires, cables, switching equipment, computers, and record 423
storage devices and media, and component parts for the tangible 424
personal property. The exemption provided in this division shall 425
be in lieu of all other exemptions under division (B) (42) (a) or 426
(n) of this section to which the vendor may otherwise be 427
entitled, based upon the use of the thing purchased in providing 428
the telecommunications, mobile telecommunications, or satellite 429
broadcasting service. 430

(35) (a) Sales where the purpose of the consumer is to use 431
or consume the things transferred in making retail sales and 432
consisting of newspaper inserts, catalogues, coupons, flyers, 433
gift certificates, or other advertising material that prices and 434
describes tangible personal property offered for retail sale. 435

(b) Sales to direct marketing vendors of preliminary 436
materials such as photographs, artwork, and typesetting that 437

will be used in printing advertising material; and of printed 438
matter that offers free merchandise or chances to win sweepstake 439
prizes and that is mailed to potential customers with 440
advertising material described in division (B) (35) (a) of this 441
section; 442

(c) Sales of equipment such as telephones, computers, 443
facsimile machines, and similar tangible personal property 444
primarily used to accept orders for direct marketing retail 445
sales. 446

(d) Sales of automatic food vending machines that preserve 447
food with a shelf life of forty-five days or less by 448
refrigeration and dispense it to the consumer. 449

For purposes of division (B) (35) of this section, "direct 450
marketing" means the method of selling where consumers order 451
tangible personal property by United States mail, delivery 452
service, or telecommunication and the vendor delivers or ships 453
the tangible personal property sold to the consumer from a 454
warehouse, catalogue distribution center, or similar fulfillment 455
facility by means of the United States mail, delivery service, 456
or common carrier. 457

(36) Sales to a person engaged in the business of 458
horticulture or producing livestock of materials to be 459
incorporated into a horticulture structure or livestock 460
structure; 461

(37) Sales of personal computers, computer monitors, 462
computer keyboards, modems, and other peripheral computer 463
equipment to an individual who is licensed or certified to teach 464
in an elementary or a secondary school in this state for use by 465
that individual in preparation for teaching elementary or 466

secondary school students;	467
(38) Sales to a professional racing team of any of the	468
following:	469
(a) Motor racing vehicles;	470
(b) Repair services for motor racing vehicles;	471
(c) Items of property that are attached to or incorporated	472
in motor racing vehicles, including engines, chassis, and all	473
other components of the vehicles, and all spare, replacement,	474
and rebuilt parts or components of the vehicles; except not	475
including tires, consumable fluids, paint, and accessories	476
consisting of instrumentation sensors and related items added to	477
the vehicle to collect and transmit data by means of telemetry	478
and other forms of communication.	479
(39) Sales of used manufactured homes and used mobile	480
homes, as defined in section 5739.0210 of the Revised Code, made	481
on or after January 1, 2000;	482
(40) Sales of tangible personal property and services to a	483
provider of electricity used or consumed directly and primarily	484
in generating, transmitting, or distributing electricity for use	485
by others, including property that is or is to be incorporated	486
into and will become a part of the consumer's production,	487
transmission, or distribution system and that retains its	488
classification as tangible personal property after	489
incorporation; fuel or power used in the production,	490
transmission, or distribution of electricity; energy conversion	491
equipment as defined in section 5727.01 of the Revised Code; and	492
tangible personal property and services used in the repair and	493
maintenance of the production, transmission, or distribution	494
system, including only those motor vehicles as are specially	495

designed and equipped for such use. The exemption provided in 496
this division shall be in lieu of all other exemptions in 497
division (B) (42) (a) or (n) of this section to which a provider 498
of electricity may otherwise be entitled based on the use of the 499
tangible personal property or service purchased in generating, 500
transmitting, or distributing electricity. 501

(41) Sales to a person providing services under division 502
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 503
personal property and services used directly and primarily in 504
providing taxable services under that section. 505

(42) Sales where the purpose of the purchaser is to do any 506
of the following: 507

(a) To incorporate the thing transferred as a material or 508
a part into tangible personal property to be produced for sale 509
by manufacturing, assembling, processing, or refining; or to use 510
or consume the thing transferred directly in producing tangible 511
personal property for sale by mining, including, without 512
limitation, the extraction from the earth of all substances that 513
are classed geologically as minerals, production of crude oil 514
and natural gas, or directly in the rendition of a public 515
utility service, except that the sales tax levied by this 516
section shall be collected upon all meals, drinks, and food for 517
human consumption sold when transporting persons. Persons 518
engaged in rendering services in the exploration for, and 519
production of, crude oil and natural gas for others are deemed 520
engaged directly in the exploration for, and production of, 521
crude oil and natural gas. This paragraph does not exempt from 522
"retail sale" or "sales at retail" the sale of tangible personal 523
property that is to be incorporated into a structure or 524
improvement to real property. 525

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;	526 527
(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	528 529
(d) To use or consume the thing directly in commercial fishing;	530 531
(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;	532 533 534 535
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	536 537 538 539 540
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	541 542 543
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	544 545 546 547 548 549
(i) To use the thing transferred as qualified research and development equipment;	550 551
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased	552 553

sales inventory in a warehouse, distribution center, or similar 554
facility when the inventory is primarily distributed outside 555
this state to retail stores of the person who owns or controls 556
the warehouse, distribution center, or similar facility, to 557
retail stores of an affiliated group of which that person is a 558
member, or by means of direct marketing. This division does not 559
apply to motor vehicles registered for operation on the public 560
highways. As used in this division, "affiliated group" has the 561
same meaning as in division (B) (3) (e) of section 5739.01 of the 562
Revised Code and "direct marketing" has the same meaning as in 563
division (B) (35) of this section. 564

(k) To use or consume the thing transferred to fulfill a 565
contractual obligation incurred by a warrantor pursuant to a 566
warranty provided as a part of the price of the tangible 567
personal property sold or by a vendor of a warranty, maintenance 568
or service contract, or similar agreement the provision of which 569
is defined as a sale under division (B) (7) of section 5739.01 of 570
the Revised Code; 571

(l) To use or consume the thing transferred in the 572
production of a newspaper for distribution to the public; 573

(m) To use tangible personal property to perform a service 574
listed in division (B) (3) of section 5739.01 of the Revised 575
Code, if the property is or is to be permanently transferred to 576
the consumer of the service as an integral part of the 577
performance of the service; 578

(n) To use or consume the thing transferred primarily in 579
producing tangible personal property for sale by farming, 580
agriculture, horticulture, or floriculture. Persons engaged in 581
rendering farming, agriculture, horticulture, or floriculture 582
services for others are deemed engaged primarily in farming, 583

agriculture, horticulture, or floriculture. This paragraph does 584
not exempt from "retail sale" or "sales at retail" the sale of 585
tangible personal property that is to be incorporated into a 586
structure or improvement to real property. 587

(o) To use or consume the thing transferred in acquiring, 588
formatting, editing, storing, and disseminating data or 589
information by electronic publishing; 590

(p) To provide the thing transferred to the owner or 591
lessee of a motor vehicle that is being repaired or serviced, if 592
the thing transferred is a rented motor vehicle and the 593
purchaser is reimbursed for the cost of the rented motor vehicle 594
by a manufacturer, warrantor, or provider of a maintenance, 595
service, or other similar contract or agreement, with respect to 596
the motor vehicle that is being repaired or serviced. 597

As used in division (B) (42) of this section, "thing" 598
includes all transactions included in divisions (B) (3) (a), (b), 599
and (e) of section 5739.01 of the Revised Code. 600

(43) Sales conducted through a coin operated device that 601
activates vacuum equipment or equipment that dispenses water, 602
whether or not in combination with soap or other cleaning agents 603
or wax, to the consumer for the consumer's use on the premises 604
in washing, cleaning, or waxing a motor vehicle, provided no 605
other personal property or personal service is provided as part 606
of the transaction. 607

(44) Sales of replacement and modification parts for 608
engines, airframes, instruments, and interiors in, and paint 609
for, aircraft used primarily in a fractional aircraft ownership 610
program, and sales of services for the repair, modification, and 611
maintenance of such aircraft, and machinery, equipment, and 612

supplies primarily used to provide those services. 613

(45) Sales of telecommunications service that is used 614
directly and primarily to perform the functions of a call 615
center. As used in this division, "call center" means any 616
physical location where telephone calls are placed or received 617
in high volume for the purpose of making sales, marketing, 618
customer service, technical support, or other specialized 619
business activity, and that employs at least fifty individuals 620
that engage in call center activities on a full-time basis, or 621
sufficient individuals to fill fifty full-time equivalent 622
positions. 623

(46) Sales by a telecommunications service vendor of 900 624
service to a subscriber. This division does not apply to 625
information services, as defined in division (FF) of section 626
5739.01 of the Revised Code. 627

(47) Sales of value-added non-voice data service. This 628
division does not apply to any similar service that is not 629
otherwise a telecommunications service. 630

(48) (a) Sales of machinery, equipment, and software to a 631
qualified direct selling entity for use in a warehouse or 632
distribution center primarily for storing, transporting, or 633
otherwise handling inventory that is held for sale to 634
independent salespersons who operate as direct sellers and that 635
is held primarily for distribution outside this state; 636

(b) As used in division (B) (48) (a) of this section: 637

(i) "Direct seller" means a person selling consumer 638
products to individuals for personal or household use and not 639
from a fixed retail location, including selling such product at 640
in-home product demonstrations, parties, and other one-on-one 641

selling. 642

(ii) "Qualified direct selling entity" means an entity 643
selling to direct sellers at the time the entity enters into a 644
tax credit agreement with the tax credit authority pursuant to 645
section 122.17 of the Revised Code, provided that the agreement 646
was entered into on or after January 1, 2007. Neither 647
contingencies relevant to the granting of, nor later 648
developments with respect to, the tax credit shall impair the 649
status of the qualified direct selling entity under division (B) 650
(48) of this section after execution of the tax credit agreement 651
by the tax credit authority. 652

(c) Division (B) (48) of this section is limited to 653
machinery, equipment, and software first stored, used, or 654
consumed in this state within the period commencing June 24, 655
2008, and ending on the date that is five years after that date. 656

(49) Sales of materials, parts, equipment, or engines used 657
in the repair or maintenance of aircraft or avionics systems of 658
such aircraft, and sales of repair, remodeling, replacement, or 659
maintenance services in this state performed on aircraft or on 660
an aircraft's avionics, engine, or component materials or parts. 661
As used in division (B) (49) of this section, "aircraft" means 662
aircraft of more than six thousand pounds maximum certified 663
takeoff weight or used exclusively in general aviation. 664

(50) Sales of full flight simulators that are used for 665
pilot or flight-crew training, sales of repair or replacement 666
parts or components, and sales of repair or maintenance services 667
for such full flight simulators. "Full flight simulator" means a 668
replica of a specific type, or make, model, and series of 669
aircraft cockpit. It includes the assemblage of equipment and 670
computer programs necessary to represent aircraft operations in 671

ground and flight conditions, a visual system providing an out- 672
of-the-cockpit view, and a system that provides cues at least 673
equivalent to those of a three-degree-of-freedom motion system, 674
and has the full range of capabilities of the systems installed 675
in the device as described in appendices A and B of part 60 of 676
chapter 1 of title 14 of the Code of Federal Regulations. 677

(51) Any transfer or lease of tangible personal property 678
between the state and JobsOhio in accordance with section 679
4313.02 of the Revised Code. 680

(52) (a) Sales to a qualifying corporation. 681

(b) As used in division (B) (52) of this section: 682

(i) "Qualifying corporation" means a nonprofit corporation 683
organized in this state that leases from an eligible county 684
land, buildings, structures, fixtures, and improvements to the 685
land that are part of or used in a public recreational facility 686
used by a major league professional athletic team or a class A 687
to class AAA minor league affiliate of a major league 688
professional athletic team for a significant portion of the 689
team's home schedule, provided the following apply: 690

(I) The facility is leased from the eligible county 691
pursuant to a lease that requires substantially all of the 692
revenue from the operation of the business or activity conducted 693
by the nonprofit corporation at the facility in excess of 694
operating costs, capital expenditures, and reserves to be paid 695
to the eligible county at least once per calendar year. 696

(II) Upon dissolution and liquidation of the nonprofit 697
corporation, all of its net assets are distributable to the 698
board of commissioners of the eligible county from which the 699
corporation leases the facility. 700

(ii) "Eligible county" has the same meaning as in section 701
307.695 of the Revised Code. 702

(53) Sales to or by a cable service provider, video 703
service provider, or radio or television broadcast station 704
regulated by the federal government of cable service or 705
programming, video service or programming, audio service or 706
programming, or electronically transferred digital audiovisual 707
or audio work. As used in division (B) (53) of this section, 708
"cable service" and "cable service provider" have the same 709
meanings as in section 1332.01 of the Revised Code, and "video 710
service," "video service provider," and "video programming" have 711
the same meanings as in section 1332.21 of the Revised Code. 712

(54) Sales of investment metal bullion and investment 713
coins. "Investment metal bullion" means any bullion described in 714
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 715
whether that bullion is in the physical possession of a trustee. 716
"Investment coin" means any coin composed primarily of gold, 717
silver, platinum, or palladium. 718

(55) Sales in a nonpackaged form of firewood, kerosene, 719
liquid petroleum gas, or number two fuel oil that is to be used 720
for heating purposes. 721

(C) For the purpose of the proper administration of this 722
chapter, and to prevent the evasion of the tax, it is presumed 723
that all sales made in this state are subject to the tax until 724
the contrary is established. 725

(D) The levy of this tax on retail sales of recreation and 726
sports club service shall not prevent a municipal corporation 727
from levying any tax on recreation and sports club dues or on 728
any income generated by recreation and sports club dues. 729

(E) The tax collected by the vendor from the consumer 730
under this chapter is not part of the price, but is a tax 731
collection for the benefit of the state, and of counties levying 732
an additional sales tax pursuant to section 5739.021 or 5739.026 733
of the Revised Code and of transit authorities levying an 734
additional sales tax pursuant to section 5739.023 of the Revised 735
Code. Except for the discount authorized under section 5739.12 736
of the Revised Code and the effects of any rounding pursuant to 737
section 5703.055 of the Revised Code, no person other than the 738
state or such a county or transit authority shall derive any 739
benefit from the collection or payment of the tax levied by this 740
section or section 5739.021, 5739.023, or 5739.026 of the 741
Revised Code. 742

Sec. 5739.212. On or before the twentieth day of the month 743
in which a certification is made under division (B) (1) of 744
section 5739.21 of the Revised Code, the director of budget and 745
management shall pay from the general revenue fund to the county 746
treasurer of a county or fiscal officer of a transit authority 747
levying a tax or taxes pursuant to section 5739.021, 5739.023, 748
or 5739.026 of the Revised Code an amount equal to the 749
difference obtained by subtracting (a) the amount of the payment 750
provided to the county treasurer or fiscal officer under 751
division (D) of section 5739.21 of the Revised Code for the 752
applicable month from (b) the amount the tax commissioner 753
estimates would have been payable to that county treasurer or 754
fiscal officer under that division for that month if section 755
5739.02 of the Revised Code had not been amended by ...B... of 756
the 132nd general assembly. A payment received by a county 757
treasurer or fiscal officer under this division shall be 758
deposited as would revenue from such tax or taxes levied by the 759
county or transit authority as required under section 5739.211 760

of the Revised Code proportionately according to the ratio that 761
the rate of each such tax levied by the county or transit 762
authority bears to the total rate of all such taxes levied 763
thereby. 764

Sec. 5741.033. On or before the twentieth day of the month 765
in which a certification under division (B) of section 5741.03 766
of the Revised Code is made, the director of budget and 767
management shall pay from the general revenue fund to the county 768
treasurer of a county or fiscal officer of a transit authority 769
levying a tax or taxes pursuant to section 5741.021, 5741.022, 770
or 5741.023 of the Revised Code an amount equal to the 771
difference obtained by subtracting (a) the amount of the payment 772
provided to the county treasurer or fiscal officer under 773
division (B) of section 5741.03 of the Revised Code for the 774
applicable month from (b) the amount the tax commissioner 775
estimates would have been payable to that county treasurer or 776
fiscal officer under that division for that month if section 777
5739.02 of the Revised Code had not been amended by ...B... of 778
the 132nd general assembly. A payment received by a county 779
treasurer or fiscal officer under this division shall be 780
deposited as would revenue from such tax or taxes levied by the 781
county or transit authority as required under section 5741.031 782
of the Revised Code proportionately according to the ratio that 783
the rate of each such tax levied by the county or transit 784
authority bears to the total rate of all such taxes levied 785
thereby. 786

Section 2. That existing sections 131.51 and 5739.02 of 787
the Revised Code are hereby repealed. 788

Section 3. The amendment by this act of section 5739.02 of 789
the Revised Code applies on and after the first day of the first 790

month that begins after the effective date of this act. 791

Section 4. Section 5739.02 of the Revised Code is 792
presented in this act as a composite of the section as amended 793
by Am. Sub. H.B. 64, Sub. H.B. 390, and Sub. S.B. 172, all of 794
the 131st General Assembly. The General Assembly, applying the 795
principle stated in division (B) of section 1.52 of the Revised 796
Code that amendments are to be harmonized if reasonably capable 797
of simultaneous operation, finds that the composite is the 798
resulting version of the section in effect prior to the 799
effective date of the section as presented in this act. 800