As Introduced

132nd General Assembly

Regular Session 2017-2018

H. B. No. 243

Representatives Patterson, Cera

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

A BILL

То	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
 the quotient obtained by dividing the total amount credited to
 the public library fund in fiscal year 2013 by the total amount
 of tax revenue credited to the general revenue fund in fiscal
 year 2013. The percentage shall be rounded to the nearest onehundredth of one per cent.

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- (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 3.5 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 <u>sum of the</u> total tax revenue credited to the 44 general revenue fund during the preceding month_plus the_ 45 <u>supplemental distribution</u>. 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 byB 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

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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

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

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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	197
churches, to organizations exempt from taxation under section	198
501(c)(3) of the Internal Revenue Code of 1986, and to any other	199
nonprofit organizations operated exclusively for charitable	200
purposes in this state, no part of the net income of which	201
inures to the benefit of any private shareholder or individual,	202
and no substantial part of the activities of which consists of	203
carrying on propaganda or otherwise attempting to influence	204
legislation; sales to offices administering one or more homes	205
for the aged or one or more hospital facilities exempt under	206
section 140.08 of the Revised Code; and sales to organizations	207
described in division (D) of section 5709.12 of the Revised	208
Code.	209

"Charitable purposes" means the relief of poverty; the 210 improvement of health through the alleviation of illness, 211 disease, or injury; the operation of an organization exclusively 212 for the provision of professional, laundry, printing, and 213 purchasing services to hospitals or charitable institutions; the 214 operation of a home for the aged, as defined in section 5701.13 215 of the Revised Code; the operation of a radio or television 216 broadcasting station that is licensed by the federal 217 communications commission as a noncommercial educational radio 218 or television station; the operation of a nonprofit animal 219 adoption service or a county humane society; the promotion of 220 education by an institution of learning that maintains a faculty 221 of qualified instructors, teaches regular continuous courses of 222 study, and confers a recognized diploma upon completion of a 223 specific curriculum; the operation of a parent-teacher 224 association, booster group, or similar organization primarily 225 engaged in the promotion and support of the curricular or 226 extracurricular activities of a primary or secondary school; the 227

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

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

(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 247 248 improvement to real property that are accepted for ownership by 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.
- (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	352
political subdivisions, agencies, instrumentalities,	353
institutions, or authorities, or by governmental entities of the	354
state or any of its political subdivisions, agencies,	355
instrumentalities, institutions, or authorities;	356
(23) Sales of motor vehicles to nonresidents of this state	357
under the circumstances described in division (B) of section	358
5739.029 of the Revised Code;	359
(24) Sales to persons engaged in the preparation of eggs	360
for sale of tangible personal property used or consumed directly	361
in such preparation, including such tangible personal property	362
used for cleaning, sanitizing, preserving, grading, sorting, and	363
classifying by size; packages, including material and parts for	364
packages, and machinery, equipment, and material for use in	365
packaging eggs for sale; and handling and transportation	366
equipment and parts therefor, except motor vehicles licensed to	367
operate on public highways, used in intraplant or interplant	368
transfers or shipment of eggs in the process of preparation for	369
sale, when the plant or plants within or between which such	370
transfers or shipments occur are operated by the same person.	371
"Packages" includes containers, cases, baskets, flats, fillers,	372
filler flats, cartons, closure materials, labels, and labeling	373
materials, and "packaging" means placing therein.	374
(25)(a) Sales of water to a consumer for residential use;	375
(b) Sales of water by a nonprofit corporation engaged	376
exclusively in the treatment, distribution, and sale of water to	377
consumers, if such water is delivered to consumers through pipes	378
or tubing.	379

(26) Fees charged for inspection or reinspection of motor	380
vehicles under section 3704.14 of the Revised Code;	381
(27) Sales to persons licensed to conduct a food service	382
operation pursuant to section 3717.43 of the Revised Code, of	383
tangible personal property primarily used directly for the	384
following:	385
(a) To prepare food for human consumption for sale;	386
(b) To preserve food that has been or will be prepared for	387
human consumption for sale by the food service operator, not	388
including tangible personal property used to display food for	389
selection by the consumer;	390
(c) To clean tangible personal property used to prepare or	391
serve food for human consumption for sale.	392
(28) Sales of animals by nonprofit animal adoption	393
services or county humane societies;	394
Services of country named societies,	334
(29) Sales of services to a corporation described in	395
division (A) of section 5709.72 of the Revised Code, and sales	396
of tangible personal property that qualifies for exemption from	397
taxation under section 5709.72 of the Revised Code;	398
(30) Sales and installation of agricultural land tile, as	399
defined in division (B)(5)(a) of section 5739.01 of the Revised	400
Code;	401
(31) Sales and erection or installation of portable grain	402
bins, as defined in division (B)(5)(b) of section 5739.01 of the	403
Revised Code;	404
(32) The sale, lease, repair, and maintenance of, parts	405
for, or items attached to or incorporated in, motor vehicles	406
that are primarily used for transporting tangible personal	407
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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

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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

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property that is to be incorporated into a structure or

improvement to real property.

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

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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;
- (1) To use or consume the thing transferred in the production of a newspaper for distribution to the public;
- (m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;
- (n) To use or consume the thing transferred primarily in 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
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(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. 5730 212. On or hefere the twentieth day of the month	743
Sec. 5739.212. On or before the twentieth day of the month	743
in which a certification is made under division (B) (1) of	
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 byB 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 byB 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