

As Introduced

**132nd General Assembly
Regular Session
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H. B. No. 753

Representative Antani

A BILL

To amend section 5739.02 of the Revised Code to 1
exempt from sales and use tax the sale of 2
diapers designed for infants and toddlers. 3

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

Section 1. That section 5739.02 of the Revised Code be 4
amended to read as follows: 5

Sec. 5739.02. For the purpose of providing revenue with 6
which to meet the needs of the state, for the use of the general 7
revenue fund of the state, for the purpose of securing a 8
thorough and efficient system of common schools throughout the 9
state, for the purpose of affording revenues, in addition to 10
those from general property taxes, permitted under 11
constitutional limitations, and from other sources, for the 12
support of local governmental functions, and for the purpose of 13
reimbursing the state for the expense of administering this 14
chapter, an excise tax is hereby levied on each retail sale made 15
in this state. 16

(A) (1) The tax shall be collected as provided in section 17
5739.025 of the Revised Code. The rate of the tax shall be five 18
and three-fourths per cent. The tax applies and is collectible 19

when the sale is made, regardless of the time when the price is 20
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term 22
of more than thirty days or an indefinite term with a minimum 23
period of more than thirty days, of any motor vehicles designed 24
by the manufacturer to carry a load of not more than one ton, 25
watercraft, outboard motor, or aircraft, or of any tangible 26
personal property, other than motor vehicles designed by the 27
manufacturer to carry a load of more than one ton, to be used by 28
the lessee or renter primarily for business purposes, the tax 29
shall be collected by the vendor at the time the lease or rental 30
is consummated and shall be calculated by the vendor on the 31
basis of the total amount to be paid by the lessee or renter 32
under the lease agreement. If the total amount of the 33
consideration for the lease or rental includes amounts that are 34
not calculated at the time the lease or rental is executed, the 35
tax shall be calculated and collected by the vendor at the time 36
such amounts are billed to the lessee or renter. In the case of 37
an open-end lease or rental, the tax shall be calculated by the 38
vendor on the basis of the total amount to be paid during the 39
initial fixed term of the lease or rental, and for each 40
subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an 43
outdrive unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45
similar provision that applies if the renewal clause is not 46
exercised is presumed to be a sham transaction. In such a case, 47
the tax shall be calculated and paid on the basis of the entire 48
length of the lease period, including any renewal periods, until 49
the termination penalty or similar provision no longer applies. 50

The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or

work done;	79
(6) Sales of motor fuel upon receipt, use, distribution,	80
or sale of which in this state a tax is imposed by the law of	81
this state, but this exemption shall not apply to the sale of	82
motor fuel on which a refund of the tax is allowable under	83
division (A) of section 5735.14 of the Revised Code; and the tax	84
commissioner may deduct the amount of tax levied by this section	85
applicable to the price of motor fuel when granting a refund of	86
motor fuel tax pursuant to division (A) of section 5735.14 of	87
the Revised Code and shall cause the amount deducted to be paid	88
into the general revenue fund of this state;	89
(7) Sales of natural gas by a natural gas company or	90
municipal gas utility, of water by a water-works company, or of	91
steam by a heating company, if in each case the thing sold is	92
delivered to consumers through pipes or conduits, and all sales	93
of communications services by a telegraph company, all terms as	94
defined in section 5727.01 of the Revised Code, and sales of	95
electricity delivered through wires;	96
(8) Casual sales by a person, or auctioneer employed	97
directly by the person to conduct such sales, except as to such	98
sales of motor vehicles, watercraft or outboard motors required	99
to be titled under section 1548.06 of the Revised Code,	100
watercraft documented with the United States coast guard,	101
snowmobiles, and all-purpose vehicles as defined in section	102
4519.01 of the Revised Code;	103
(9) (a) Sales of services or tangible personal property,	104
other than motor vehicles, mobile homes, and manufactured homes,	105
by churches, organizations exempt from taxation under section	106
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit	107
organizations operated exclusively for charitable purposes as	108

defined in division (B) (12) of this section, provided that the 109
number of days on which such tangible personal property or 110
services, other than items never subject to the tax, are sold 111
does not exceed six in any calendar year, except as otherwise 112
provided in division (B) (9) (b) of this section. If the number of 113
days on which such sales are made exceeds six in any calendar 114
year, the church or organization shall be considered to be 115
engaged in business and all subsequent sales by it shall be 116
subject to the tax. In counting the number of days, all sales by 117
groups within a church or within an organization shall be 118
considered to be sales of that church or organization. 119

(b) The limitation on the number of days on which tax- 120
exempt sales may be made by a church or organization under 121
division (B) (9) (a) of this section does not apply to sales made 122
by student clubs and other groups of students of a primary or 123
secondary school, or a parent-teacher association, booster 124
group, or similar organization that raises money to support or 125
fund curricular or extracurricular activities of a primary or 126
secondary school. 127

(c) Divisions (B) (9) (a) and (b) of this section do not 128
apply to sales by a noncommercial educational radio or 129
television broadcasting station. 130

(10) Sales not within the taxing power of this state under 131
the Constitution or laws of the United States or the 132
Constitution of this state; 133

(11) Except for transactions that are sales under division 134
(B) (3) (r) of section 5739.01 of the Revised Code, the 135
transportation of persons or property, unless the transportation 136
is by a private investigation and security service; 137

(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 169
in music, dramatics, the arts, and related fields are made in 170
order to foster public interest and education therein; the 171
production of performances in music, dramatics, and the arts; or 172
the promotion of education by an organization engaged in 173
carrying on research in, or the dissemination of, scientific and 174
technological knowledge and information primarily for the 175
public. 176

Nothing in this division shall be deemed to exempt sales 177
to any organization for use in the operation or carrying on of a 178
trade or business, or sales to a home for the aged for use in 179
the operation of independent living facilities as defined in 180
division (A) of section 5709.12 of the Revised Code. 181

(13) Building and construction materials and services sold 182
to construction contractors for incorporation into a structure 183
or improvement to real property under a construction contract 184
with this state or a political subdivision of this state, or 185
with the United States government or any of its agencies; 186
building and construction materials and services sold to 187
construction contractors for incorporation into a structure or 188
improvement to real property that are accepted for ownership by 189
this state or any of its political subdivisions, or by the 190
United States government or any of its agencies at the time of 191
completion of the structures or improvements; building and 192
construction materials sold to construction contractors for 193
incorporation into a horticulture structure or livestock 194
structure for a person engaged in the business of horticulture 195
or producing livestock; building materials and services sold to 196
a construction contractor for incorporation into a house of 197
public worship or religious education, or a building used 198
exclusively for charitable purposes under a construction 199

contract with an organization whose purpose is as described in 200
division (B) (12) of this section; building materials and 201
services sold to a construction contractor for incorporation 202
into a building under a construction contract with an 203
organization exempt from taxation under section 501(c) (3) of the 204
Internal Revenue Code of 1986 when the building is to be used 205
exclusively for the organization's exempt purposes; building and 206
construction materials sold for incorporation into the original 207
construction of a sports facility under section 307.696 of the 208
Revised Code; building and construction materials and services 209
sold to a construction contractor for incorporation into real 210
property outside this state if such materials and services, when 211
sold to a construction contractor in the state in which the real 212
property is located for incorporation into real property in that 213
state, would be exempt from a tax on sales levied by that state; 214
building and construction materials for incorporation into a 215
transportation facility pursuant to a public-private agreement 216
entered into under sections 5501.70 to 5501.83 of the Revised 217
Code; and, until one calendar year after the construction of a 218
convention center that qualifies for property tax exemption 219
under section 5709.084 of the Revised Code is completed, 220
building and construction materials and services sold to a 221
construction contractor for incorporation into the real property 222
comprising that convention center; 223

(14) Sales of ships or vessels or rail rolling stock used 224
or to be used principally in interstate or foreign commerce, and 225
repairs, alterations, fuel, and lubricants for such ships or 226
vessels or rail rolling stock; 227

(15) Sales to persons primarily engaged in any of the 228
activities mentioned in division (B) (42) (a), (g), or (h) of this 229
section, to persons engaged in making retail sales, or to 230

persons who purchase for sale from a manufacturer tangible 231
personal property that was produced by the manufacturer in 232
accordance with specific designs provided by the purchaser, of 233
packages, including material, labels, and parts for packages, 234
and of machinery, equipment, and material for use primarily in 235
packaging tangible personal property produced for sale, 236
including any machinery, equipment, and supplies used to make 237
labels or packages, to prepare packages or products for 238
labeling, or to label packages or products, by or on the order 239
of the person doing the packaging, or sold at retail. "Packages" 240
includes bags, baskets, cartons, crates, boxes, cans, bottles, 241
bindings, wrappings, and other similar devices and containers, 242
but does not include motor vehicles or bulk tanks, trailers, or 243
similar devices attached to motor vehicles. "Packaging" means 244
placing in a package. Division (B) (15) of this section does not 245
apply to persons engaged in highway transportation for hire. 246

(16) Sales of food to persons using supplemental nutrition 247
assistance program benefits to purchase the food. As used in 248
this division, "food" has the same meaning as in 7 U.S.C. 2012 249
and federal regulations adopted pursuant to the Food and 250
Nutrition Act of 2008. 251

(17) Sales to persons engaged in farming, agriculture, 252
horticulture, or floriculture, of tangible personal property for 253
use or consumption primarily in the production by farming, 254
agriculture, horticulture, or floriculture of other tangible 255
personal property for use or consumption primarily in the 256
production of tangible personal property for sale by farming, 257
agriculture, horticulture, or floriculture; or material and 258
parts for incorporation into any such tangible personal property 259
for use or consumption in production; and of tangible personal 260
property for such use or consumption in the conditioning or 261

holding of products produced by and for such use, consumption, 262
or sale by persons engaged in farming, agriculture, 263
horticulture, or floriculture, except where such property is 264
incorporated into real property; 265

(18) Sales of drugs for a human being that may be 266
dispensed only pursuant to a prescription; insulin as recognized 267
in the official United States pharmacopoeia; urine and blood 268
testing materials when used by diabetics or persons with 269
hypoglycemia to test for glucose or acetone; hypodermic syringes 270
and needles when used by diabetics for insulin injections; 271
epoetin alfa when purchased for use in the treatment of persons 272
with medical disease; hospital beds when purchased by hospitals, 273
nursing homes, or other medical facilities; and medical oxygen 274
and medical oxygen-dispensing equipment when purchased by 275
hospitals, nursing homes, or other medical facilities; 276

(19) Sales of prosthetic devices, durable medical 277
equipment for home use, or mobility enhancing equipment, when 278
made pursuant to a prescription and when such devices or 279
equipment are for use by a human being. 280

(20) Sales of emergency and fire protection vehicles and 281
equipment to nonprofit organizations for use solely in providing 282
fire protection and emergency services, including trauma care 283
and emergency medical services, for political subdivisions of 284
the state; 285

(21) Sales of tangible personal property manufactured in 286
this state, if sold by the manufacturer in this state to a 287
retailer for use in the retail business of the retailer outside 288
of this state and if possession is taken from the manufacturer 289
by the purchaser within this state for the sole purpose of 290
immediately removing the same from this state in a vehicle owned 291

by the purchaser;	292
(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;	293 294 295 296 297
(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;	298 299 300
(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.	301 302 303 304 305 306 307 308 309 310 311 312 313 314 315
(25) (a) Sales of water to a consumer for residential use;	316
(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.	317 318 319 320

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	321 322
(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:	323 324 325 326
(a) To prepare food for human consumption for sale;	327
(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;	328 329 330 331
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	332 333
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	334 335
(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;	336 337 338 339
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	340 341 342
(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;	343 344 345
(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	346 347 348

property belonging to others by a person engaged in highway 349
transportation for hire, except for packages and packaging used 350
for the transportation of tangible personal property; 351

(33) Sales to the state headquarters of any veterans' 352
organization in this state that is either incorporated and 353
issued a charter by the congress of the United States or is 354
recognized by the United States veterans administration, for use 355
by the headquarters; 356

(34) Sales to a telecommunications service vendor, mobile 357
telecommunications service vendor, or satellite broadcasting 358
service vendor of tangible personal property and services used 359
directly and primarily in transmitting, receiving, switching, or 360
recording any interactive, one- or two-way electromagnetic 361
communications, including voice, image, data, and information, 362
through the use of any medium, including, but not limited to, 363
poles, wires, cables, switching equipment, computers, and record 364
storage devices and media, and component parts for the tangible 365
personal property. The exemption provided in this division shall 366
be in lieu of all other exemptions under division (B) (42) (a) or 367
(n) of this section to which the vendor may otherwise be 368
entitled, based upon the use of the thing purchased in providing 369
the telecommunications, mobile telecommunications, or satellite 370
broadcasting service. 371

(35) (a) Sales where the purpose of the consumer is to use 372
or consume the things transferred in making retail sales and 373
consisting of newspaper inserts, catalogues, coupons, flyers, 374
gift certificates, or other advertising material that prices and 375
describes tangible personal property offered for retail sale. 376

(b) Sales to direct marketing vendors of preliminary 377
materials such as photographs, artwork, and typesetting that 378

will be used in printing advertising material; and of printed 379
matter that offers free merchandise or chances to win sweepstake 380
prizes and that is mailed to potential customers with 381
advertising material described in division (B) (35) (a) of this 382
section; 383

(c) Sales of equipment such as telephones, computers, 384
facsimile machines, and similar tangible personal property 385
primarily used to accept orders for direct marketing retail 386
sales. 387

(d) Sales of automatic food vending machines that preserve 388
food with a shelf life of forty-five days or less by 389
refrigeration and dispense it to the consumer. 390

For purposes of division (B) (35) of this section, "direct 391
marketing" means the method of selling where consumers order 392
tangible personal property by United States mail, delivery 393
service, or telecommunication and the vendor delivers or ships 394
the tangible personal property sold to the consumer from a 395
warehouse, catalogue distribution center, or similar fulfillment 396
facility by means of the United States mail, delivery service, 397
or common carrier. 398

(36) Sales to a person engaged in the business of 399
horticulture or producing livestock of materials to be 400
incorporated into a horticulture structure or livestock 401
structure; 402

(37) Sales of personal computers, computer monitors, 403
computer keyboards, modems, and other peripheral computer 404
equipment to an individual who is licensed or certified to teach 405
in an elementary or a secondary school in this state for use by 406
that individual in preparation for teaching elementary or 407

secondary school students;	408
(38) Sales to a professional racing team of any of the	409
following:	410
(a) Motor racing vehicles;	411
(b) Repair services for motor racing vehicles;	412
(c) Items of property that are attached to or incorporated	413
in motor racing vehicles, including engines, chassis, and all	414
other components of the vehicles, and all spare, replacement,	415
and rebuilt parts or components of the vehicles; except not	416
including tires, consumable fluids, paint, and accessories	417
consisting of instrumentation sensors and related items added to	418
the vehicle to collect and transmit data by means of telemetry	419
and other forms of communication.	420
(39) Sales of used manufactured homes and used mobile	421
homes, as defined in section 5739.0210 of the Revised Code, made	422
on or after January 1, 2000;	423
(40) Sales of tangible personal property and services to a	424
provider of electricity used or consumed directly and primarily	425
in generating, transmitting, or distributing electricity for use	426
by others, including property that is or is to be incorporated	427
into and will become a part of the consumer's production,	428
transmission, or distribution system and that retains its	429
classification as tangible personal property after	430
incorporation; fuel or power used in the production,	431
transmission, or distribution of electricity; energy conversion	432
equipment as defined in section 5727.01 of the Revised Code; and	433
tangible personal property and services used in the repair and	434
maintenance of the production, transmission, or distribution	435
system, including only those motor vehicles as are specially	436

designed and equipped for such use. The exemption provided in 437
this division shall be in lieu of all other exemptions in 438
division (B) (42) (a) or (n) of this section to which a provider 439
of electricity may otherwise be entitled based on the use of the 440
tangible personal property or service purchased in generating, 441
transmitting, or distributing electricity. 442

(41) Sales to a person providing services under division 443
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 444
personal property and services used directly and primarily in 445
providing taxable services under that section. 446

(42) Sales where the purpose of the purchaser is to do any 447
of the following: 448

(a) To incorporate the thing transferred as a material or 449
a part into tangible personal property to be produced for sale 450
by manufacturing, assembling, processing, or refining; or to use 451
or consume the thing transferred directly in producing tangible 452
personal property for sale by mining, including, without 453
limitation, the extraction from the earth of all substances that 454
are classed geologically as minerals, or directly in the 455
rendition of a public utility service, except that the sales tax 456
levied by this section shall be collected upon all meals, 457
drinks, and food for human consumption sold when transporting 458
persons. This paragraph does not exempt from "retail sale" or 459
"sales at retail" the sale of tangible personal property that is 460
to be incorporated into a structure or improvement to real 461
property. 462

(b) To hold the thing transferred as security for the 463
performance of an obligation of the vendor; 464

(c) To resell, hold, use, or consume the thing transferred 465

as evidence of a contract of insurance;	466
(d) To use or consume the thing directly in commercial fishing;	467 468
(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;	469 470 471 472
(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;	473 474 475 476 477
(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;	478 479 480
(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;	481 482 483 484 485 486
(i) To use the thing transferred as qualified research and development equipment;	487 488
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to	489 490 491 492 493 494

retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section.

(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;

(l) 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 producing tangible personal property for sale by farming, agriculture, horticulture, or floriculture. Persons engaged in rendering farming, agriculture, horticulture, or floriculture services for others are deemed engaged primarily in farming, agriculture, horticulture, or floriculture. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

(o) To use or consume the thing transferred in acquiring, 525
formatting, editing, storing, and disseminating data or 526
information by electronic publishing; 527

(p) To provide the thing transferred to the owner or 528
lessee of a motor vehicle that is being repaired or serviced, if 529
the thing transferred is a rented motor vehicle and the 530
purchaser is reimbursed for the cost of the rented motor vehicle 531
by a manufacturer, warrantor, or provider of a maintenance, 532
service, or other similar contract or agreement, with respect to 533
the motor vehicle that is being repaired or serviced; 534

(q) To use or consume the thing transferred directly in 535
production of crude oil and natural gas for sale. Persons 536
engaged in rendering production services for others are deemed 537
engaged in production. 538

As used in division (B) (42) (q) of this section, 539
"production" means operations and tangible personal property 540
directly used to expose and evaluate an underground reservoir 541
that may contain hydrocarbon resources, prepare the wellbore for 542
production, and lift and control all substances yielded by the 543
reservoir to the surface of the earth. 544

(i) For the purposes of division (B) (42) (q) of this 545
section, the "thing transferred" includes, but is not limited 546
to, any of the following: 547

(I) Services provided in the construction of permanent 548
access roads, services provided in the construction of the well 549
site, and services provided in the construction of temporary 550
impoundments; 551

(II) Equipment and rigging used for the specific purpose 552
of creating with integrity a wellbore pathway to underground 553

reservoirs;	554
(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;	555 556 557
(IV) Casing, tubulars, and float and centralizing equipment;	558 559
(V) Trailers to which production equipment is attached;	560
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	561 562 563
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	564 565 566
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	567 568 569 570
(IX) Pressure pumping equipment;	571
(X) Artificial lift systems equipment;	572
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	573 574 575
(XII) Tangible personal property directly used to control production equipment.	576 577
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	578 579 580

(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	581 582 583
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	584 585 586
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	587 588 589
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	590 591 592 593
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	594 595 596 597
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	598 599
(VII) Well site fencing, lighting, or security systems;	600
(VIII) Communication devices or services;	601
(IX) Office supplies;	602
(X) Trailers used as offices or lodging;	603
(XI) Motor vehicles of any kind;	604
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	605 606
(XIII) Tangible personal property used primarily as a	607

safety device; 608

(XIV) Data collection or monitoring devices; 609

(XV) Access ladders, stairs, or platforms attached to 610
storage tanks. 611

The enumeration of tangible personal property in division 612
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 613
and any tangible personal property not so enumerated shall not 614
necessarily be construed to be a "thing transferred" for the 615
purposes of division (B) (42) (q) of this section. 616

The commissioner shall adopt and promulgate rules under 617
sections 119.01 to 119.13 of the Revised Code that the 618
commissioner deems necessary to administer division (B) (42) (q) 619
of this section. 620

As used in division (B) (42) of this section, "thing" 621
includes all transactions included in divisions (B) (3) (a), (b), 622
and (e) of section 5739.01 of the Revised Code. 623

(43) Sales conducted through a coin operated device that 624
activates vacuum equipment or equipment that dispenses water, 625
whether or not in combination with soap or other cleaning agents 626
or wax, to the consumer for the consumer's use on the premises 627
in washing, cleaning, or waxing a motor vehicle, provided no 628
other personal property or personal service is provided as part 629
of the transaction. 630

(44) Sales of replacement and modification parts for 631
engines, airframes, instruments, and interiors in, and paint 632
for, aircraft used primarily in a fractional aircraft ownership 633
program, and sales of services for the repair, modification, and 634
maintenance of such aircraft, and machinery, equipment, and 635
supplies primarily used to provide those services. 636

(45) Sales of telecommunications service that is used 637
directly and primarily to perform the functions of a call 638
center. As used in this division, "call center" means any 639
physical location where telephone calls are placed or received 640
in high volume for the purpose of making sales, marketing, 641
customer service, technical support, or other specialized 642
business activity, and that employs at least fifty individuals 643
that engage in call center activities on a full-time basis, or 644
sufficient individuals to fill fifty full-time equivalent 645
positions. 646

(46) Sales by a telecommunications service vendor of 900 647
service to a subscriber. This division does not apply to 648
information services, as defined in division (FF) of section 649
5739.01 of the Revised Code. 650

(47) Sales of value-added non-voice data service. This 651
division does not apply to any similar service that is not 652
otherwise a telecommunications service. 653

(48) (a) Sales of machinery, equipment, and software to a 654
qualified direct selling entity for use in a warehouse or 655
distribution center primarily for storing, transporting, or 656
otherwise handling inventory that is held for sale to 657
independent salespersons who operate as direct sellers and that 658
is held primarily for distribution outside this state; 659

(b) As used in division (B) (48) (a) of this section: 660

(i) "Direct seller" means a person selling consumer 661
products to individuals for personal or household use and not 662
from a fixed retail location, including selling such product at 663
in-home product demonstrations, parties, and other one-on-one 664
selling. 665

(ii) "Qualified direct selling entity" means an entity 666
selling to direct sellers at the time the entity enters into a 667
tax credit agreement with the tax credit authority pursuant to 668
section 122.17 of the Revised Code, provided that the agreement 669
was entered into on or after January 1, 2007. Neither 670
contingencies relevant to the granting of, nor later 671
developments with respect to, the tax credit shall impair the 672
status of the qualified direct selling entity under division (B) 673
(48) of this section after execution of the tax credit agreement 674
by the tax credit authority. 675

(c) Division (B) (48) of this section is limited to 676
machinery, equipment, and software first stored, used, or 677
consumed in this state within the period commencing June 24, 678
2008, and ending on the date that is five years after that date. 679

(49) Sales of materials, parts, equipment, or engines used 680
in the repair or maintenance of aircraft or avionics systems of 681
such aircraft, and sales of repair, remodeling, replacement, or 682
maintenance services in this state performed on aircraft or on 683
an aircraft's avionics, engine, or component materials or parts. 684
As used in division (B) (49) of this section, "aircraft" means 685
aircraft of more than six thousand pounds maximum certified 686
takeoff weight or used exclusively in general aviation. 687

(50) Sales of full flight simulators that are used for 688
pilot or flight-crew training, sales of repair or replacement 689
parts or components, and sales of repair or maintenance services 690
for such full flight simulators. "Full flight simulator" means a 691
replica of a specific type, or make, model, and series of 692
aircraft cockpit. It includes the assemblage of equipment and 693
computer programs necessary to represent aircraft operations in 694
ground and flight conditions, a visual system providing an out- 695

of-the-cockpit view, and a system that provides cues at least 696
equivalent to those of a three-degree-of-freedom motion system, 697
and has the full range of capabilities of the systems installed 698
in the device as described in appendices A and B of part 60 of 699
chapter 1 of title 14 of the Code of Federal Regulations. 700

(51) Any transfer or lease of tangible personal property 701
between the state and JobsOhio in accordance with section 702
4313.02 of the Revised Code. 703

(52) (a) Sales to a qualifying corporation. 704

(b) As used in division (B) (52) of this section: 705

(i) "Qualifying corporation" means a nonprofit corporation 706
organized in this state that leases from an eligible county 707
land, buildings, structures, fixtures, and improvements to the 708
land that are part of or used in a public recreational facility 709
used by a major league professional athletic team or a class A 710
to class AAA minor league affiliate of a major league 711
professional athletic team for a significant portion of the 712
team's home schedule, provided the following apply: 713

(I) The facility is leased from the eligible county 714
pursuant to a lease that requires substantially all of the 715
revenue from the operation of the business or activity conducted 716
by the nonprofit corporation at the facility in excess of 717
operating costs, capital expenditures, and reserves to be paid 718
to the eligible county at least once per calendar year. 719

(II) Upon dissolution and liquidation of the nonprofit 720
corporation, all of its net assets are distributable to the 721
board of commissioners of the eligible county from which the 722
corporation leases the facility. 723

(ii) "Eligible county" has the same meaning as in section 724

307.695 of the Revised Code.	725
(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work. As used in division (B) (53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video programming" have the same meanings as in section 1332.21 of the Revised Code.	726 727 728 729 730 731 732 733 734 735
(54) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any bullion described in section 408(m) (3) (B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee. "Investment coin" means any coin composed primarily of gold, silver, platinum, or palladium.	736 737 738 739 740 741
(55) Sales of a digital audio work electronically transferred for delivery through use of a machine, such as a juke box, that does all of the following:	742 743 744
(a) Accepts direct payments to operate;	745
(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section;	746 747 748
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	749 750
(56) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:	751 752 753

(i) An item of clothing, the price of which is seventy-five dollars or less;	754 755
(ii) An item of school supplies, the price of which is twenty dollars or less;	756 757
(iii) An item of school instructional material, the price of which is twenty dollars or less.	758 759
(b) As used in division (B) (56) of this section:	760
(i) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; ear muffs <u> earmuffs </u> ; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.	761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782

(ii) "School supplies" means items commonly used by a student in a course of study. "School supplies" includes only the following items: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders, expandable, pocket, plastic, and manila; glue, paste, and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets. "School supplies" does not include any item purchased for use in a trade or business.

(iii) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. "School instructional material" includes only the following items: reference books, reference maps and globes, textbooks, and workbooks. "School instructional material" does not include any material purchased for use in a trade or business.

(57) Sales of disposable or washable diapers designed to be worn by an infant or toddler who cannot yet control bladder or bowel movements.

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

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on

any income generated by recreation and sports club dues. 813

(E) The tax collected by the vendor from the consumer 814
under this chapter is not part of the price, but is a tax 815
collection for the benefit of the state, and of counties levying 816
an additional sales tax pursuant to section 5739.021 or 5739.026 817
of the Revised Code and of transit authorities levying an 818
additional sales tax pursuant to section 5739.023 of the Revised 819
Code. Except for the discount authorized under section 5739.12 820
of the Revised Code and the effects of any rounding pursuant to 821
section 5703.055 of the Revised Code, no person other than the 822
state or such a county or transit authority shall derive any 823
benefit from the collection or payment of the tax levied by this 824
section or section 5739.021, 5739.023, or 5739.026 of the 825
Revised Code. 826

Section 2. That existing section 5739.02 of the Revised 827
Code is hereby repealed. 828

Section 3. The amendment by this act of section 5739.02 of 829
the Revised Code applies on and after the first day of the first 830
month that begins at least thirty days after the effective date 831
of this act. 832

Section 4. Section 5739.02 of the Revised Code is 833
presented in this act as a composite of the section as amended 834
by Am. Sub. H.B. 49, Sub. H.B. 430, and Sub. S.B. 226, all of 835
the 132nd General Assembly. The General Assembly, applying the 836
principle stated in division (B) of section 1.52 of the Revised 837
Code that amendments are to be harmonized if reasonably capable 838
of simultaneous operation, finds that the composite is the 839
resulting version of the section in effect prior to the 840
effective date of the section as presented in this act. 841