

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 226**

**Senator Bacon**

**Cosponsors: Senators Eklund, LaRose, Yuko, Oelslager, Manning, Hottinger,  
Lehner**

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**A BILL**

To amend sections 5739.02, 5739.03, and 5739.05 of 1  
the Revised Code to provide for a permanent 2  
three-day sales tax "holiday" each August during 3  
which sales of clothing and school supplies are 4  
exempt from sales and use tax. 5

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

**Section 1.** That sections 5739.02, 5739.03, and 5739.05 of 6  
the Revised Code be amended to read as follows: 7

**Sec. 5739.02.** For the purpose of providing revenue with 8  
which to meet the needs of the state, for the use of the general 9  
revenue fund of the state, for the purpose of securing a 10  
thorough and efficient system of common schools throughout the 11  
state, for the purpose of affording revenues, in addition to 12  
those from general property taxes, permitted under 13  
constitutional limitations, and from other sources, for the 14  
support of local governmental functions, and for the purpose of 15  
reimbursing the state for the expense of administering this 16  
chapter, an excise tax is hereby levied on each retail sale made 17  
in this state. 18

(A) (1) The tax shall be collected as provided in section 19  
5739.025 of the Revised Code. The rate of the tax shall be five 20  
and three-fourths per cent. The tax applies and is collectible 21  
when the sale is made, regardless of the time when the price is 22  
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24  
of more than thirty days or an indefinite term with a minimum 25  
period of more than thirty days, of any motor vehicles designed 26  
by the manufacturer to carry a load of not more than one ton, 27  
watercraft, outboard motor, or aircraft, or of any tangible 28  
personal property, other than motor vehicles designed by the 29  
manufacturer to carry a load of more than one ton, to be used by 30  
the lessee or renter primarily for business purposes, the tax 31  
shall be collected by the vendor at the time the lease or rental 32  
is consummated and shall be calculated by the vendor on the 33  
basis of the total amount to be paid by the lessee or renter 34  
under the lease agreement. If the total amount of the 35  
consideration for the lease or rental includes amounts that are 36  
not calculated at the time the lease or rental is executed, the 37  
tax shall be calculated and collected by the vendor at the time 38  
such amounts are billed to the lessee or renter. In the case of 39  
an open-end lease or rental, the tax shall be calculated by the 40  
vendor on the basis of the total amount to be paid during the 41  
initial fixed term of the lease or rental, and for each 42  
subsequent renewal period as it comes due. As used in this 43  
division, "motor vehicle" has the same meaning as in section 44  
4501.01 of the Revised Code, and "watercraft" includes an 45  
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or 47  
similar provision that applies if the renewal clause is not 48  
exercised is presumed to be a sham transaction. In such a case, 49

the tax shall be calculated and paid on the basis of the entire 50  
length of the lease period, including any renewal periods, until 51  
the termination penalty or similar provision no longer applies. 52  
The taxpayer shall bear the burden, by a preponderance of the 53  
evidence, that the transaction or series of transactions is not 54  
a sham transaction. 55

(3) Except as provided in division (A) (2) of this section, 56  
in the case of a sale, the price of which consists in whole or 57  
in part of the lease or rental of tangible personal property, 58  
the tax shall be measured by the installments of that lease or 59  
rental. 60

(4) In the case of a sale of a physical fitness facility 61  
service or recreation and sports club service, the price of 62  
which consists in whole or in part of a membership for the 63  
receipt of the benefit of the service, the tax applicable to the 64  
sale shall be measured by the installments thereof. 65

(B) The tax does not apply to the following: 66

(1) Sales to the state or any of its political 67  
subdivisions, or to any other state or its political 68  
subdivisions if the laws of that state exempt from taxation 69  
sales made to this state and its political subdivisions; 70

(2) Sales of food for human consumption off the premises 71  
where sold; 72

(3) Sales of food sold to students only in a cafeteria, 73  
dormitory, fraternity, or sorority maintained in a private, 74  
public, or parochial school, college, or university; 75

(4) Sales of newspapers and sales or transfers of 76  
magazines distributed as controlled circulation publications; 77

(5) The furnishing, preparing, or serving of meals without 78  
charge by an employer to an employee provided the employer 79  
records the meals as part compensation for services performed or 80  
work done; 81

(6) Sales of motor fuel upon receipt, use, distribution, 82  
or sale of which in this state a tax is imposed by the law of 83  
this state, but this exemption shall not apply to the sale of 84  
motor fuel on which a refund of the tax is allowable under 85  
division (A) of section 5735.14 of the Revised Code; and the tax 86  
commissioner may deduct the amount of tax levied by this section 87  
applicable to the price of motor fuel when granting a refund of 88  
motor fuel tax pursuant to division (A) of section 5735.14 of 89  
the Revised Code and shall cause the amount deducted to be paid 90  
into the general revenue fund of this state; 91

(7) Sales of natural gas by a natural gas company or 92  
municipal gas utility, of water by a water-works company, or of 93  
steam by a heating company, if in each case the thing sold is 94  
delivered to consumers through pipes or conduits, and all sales 95  
of communications services by a telegraph company, all terms as 96  
defined in section 5727.01 of the Revised Code, and sales of 97  
electricity delivered through wires; 98

(8) Casual sales by a person, or auctioneer employed 99  
directly by the person to conduct such sales, except as to such 100  
sales of motor vehicles, watercraft or outboard motors required 101  
to be titled under section 1548.06 of the Revised Code, 102  
watercraft documented with the United States coast guard, 103  
snowmobiles, and all-purpose vehicles as defined in section 104  
4519.01 of the Revised Code; 105

(9) (a) Sales of services or tangible personal property, 106  
other than motor vehicles, mobile homes, and manufactured homes, 107

by churches, organizations exempt from taxation under section 108  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 109  
organizations operated exclusively for charitable purposes as 110  
defined in division (B) (12) of this section, provided that the 111  
number of days on which such tangible personal property or 112  
services, other than items never subject to the tax, are sold 113  
does not exceed six in any calendar year, except as otherwise 114  
provided in division (B) (9) (b) of this section. If the number of 115  
days on which such sales are made exceeds six in any calendar 116  
year, the church or organization shall be considered to be 117  
engaged in business and all subsequent sales by it shall be 118  
subject to the tax. In counting the number of days, all sales by 119  
groups within a church or within an organization shall be 120  
considered to be sales of that church or organization. 121

(b) The limitation on the number of days on which tax- 122  
exempt sales may be made by a church or organization under 123  
division (B) (9) (a) of this section does not apply to sales made 124  
by student clubs and other groups of students of a primary or 125  
secondary school, or a parent-teacher association, booster 126  
group, or similar organization that raises money to support or 127  
fund curricular or extracurricular activities of a primary or 128  
secondary school. 129

(c) Divisions (B) (9) (a) and (b) of this section do not 130  
apply to sales by a noncommercial educational radio or 131  
television broadcasting station. 132

(10) Sales not within the taxing power of this state under 133  
the Constitution or laws of the United States or the 134  
Constitution of this state; 135

(11) Except for transactions that are sales under division 136  
(B) (3) (r) of section 5739.01 of the Revised Code, the 137

transportation of persons or property, unless the transportation	138
is by a private investigation and security service;	139
(12) Sales of tangible personal property or services to	140
churches, to organizations exempt from taxation under section	141
501(c)(3) of the Internal Revenue Code of 1986, and to any other	142
nonprofit organizations operated exclusively for charitable	143
purposes in this state, no part of the net income of which	144
inures to the benefit of any private shareholder or individual,	145
and no substantial part of the activities of which consists of	146
carrying on propaganda or otherwise attempting to influence	147
legislation; sales to offices administering one or more homes	148
for the aged or one or more hospital facilities exempt under	149
section 140.08 of the Revised Code; and sales to organizations	150
described in division (D) of section 5709.12 of the Revised	151
Code.	152
"Charitable purposes" means the relief of poverty; the	153
improvement of health through the alleviation of illness,	154
disease, or injury; the operation of an organization exclusively	155
for the provision of professional, laundry, printing, and	156
purchasing services to hospitals or charitable institutions; the	157
operation of a home for the aged, as defined in section 5701.13	158
of the Revised Code; the operation of a radio or television	159
broadcasting station that is licensed by the federal	160
communications commission as a noncommercial educational radio	161
or television station; the operation of a nonprofit animal	162
adoption service or a county humane society; the promotion of	163
education by an institution of learning that maintains a faculty	164
of qualified instructors, teaches regular continuous courses of	165
study, and confers a recognized diploma upon completion of a	166
specific curriculum; the operation of a parent-teacher	167
association, booster group, or similar organization primarily	168

engaged in the promotion and support of the curricular or 169  
extracurricular activities of a primary or secondary school; the 170  
operation of a community or area center in which presentations 171  
in music, dramatics, the arts, and related fields are made in 172  
order to foster public interest and education therein; the 173  
production of performances in music, dramatics, and the arts; or 174  
the promotion of education by an organization engaged in 175  
carrying on research in, or the dissemination of, scientific and 176  
technological knowledge and information primarily for the 177  
public. 178

Nothing in this division shall be deemed to exempt sales 179  
to any organization for use in the operation or carrying on of a 180  
trade or business, or sales to a home for the aged for use in 181  
the operation of independent living facilities as defined in 182  
division (A) of section 5709.12 of the Revised Code. 183

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

public worship or religious education, or a building used 200  
exclusively for charitable purposes under a construction 201  
contract with an organization whose purpose is as described in 202  
division (B) (12) of this section; building materials and 203  
services sold to a construction contractor for incorporation 204  
into a building under a construction contract with an 205  
organization exempt from taxation under section 501(c) (3) of the 206  
Internal Revenue Code of 1986 when the building is to be used 207  
exclusively for the organization's exempt purposes; building and 208  
construction materials sold for incorporation into the original 209  
construction of a sports facility under section 307.696 of the 210  
Revised Code; building and construction materials and services 211  
sold to a construction contractor for incorporation into real 212  
property outside this state if such materials and services, when 213  
sold to a construction contractor in the state in which the real 214  
property is located for incorporation into real property in that 215  
state, would be exempt from a tax on sales levied by that state; 216  
building and construction materials for incorporation into a 217  
transportation facility pursuant to a public-private agreement 218  
entered into under sections 5501.70 to 5501.83 of the Revised 219  
Code; and, until one calendar year after the construction of a 220  
convention center that qualifies for property tax exemption 221  
under section 5709.084 of the Revised Code is completed, 222  
building and construction materials and services sold to a 223  
construction contractor for incorporation into the real property 224  
comprising that convention center; 225

(14) Sales of ships or vessels or rail rolling stock used 226  
or to be used principally in interstate or foreign commerce, and 227  
repairs, alterations, fuel, and lubricants for such ships or 228  
vessels or rail rolling stock; 229

(15) Sales to persons primarily engaged in any of the 230



activities mentioned in division (B)(42)(a), (g), or (h) of this 231  
section, to persons engaged in making retail sales, or to 232  
persons who purchase for sale from a manufacturer tangible 233  
personal property that was produced by the manufacturer in 234  
accordance with specific designs provided by the purchaser, of 235  
packages, including material, labels, and parts for packages, 236  
and of machinery, equipment, and material for use primarily in 237  
packaging tangible personal property produced for sale, 238  
including any machinery, equipment, and supplies used to make 239  
labels or packages, to prepare packages or products for 240  
labeling, or to label packages or products, by or on the order 241  
of the person doing the packaging, or sold at retail. "Packages" 242  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 243  
bindings, wrappings, and other similar devices and containers, 244  
but does not include motor vehicles or bulk tanks, trailers, or 245  
similar devices attached to motor vehicles. "Packaging" means 246  
placing in a package. Division (B)(15) of this section does not 247  
apply to persons engaged in highway transportation for hire. 248

(16) Sales of food to persons using supplemental nutrition 249  
assistance program benefits to purchase the food. As used in 250  
this division, "food" has the same meaning as in 7 U.S.C. 2012 251  
and federal regulations adopted pursuant to the Food and 252  
Nutrition Act of 2008. 253

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

for use or consumption in production; and of tangible personal 262  
property for such use or consumption in the conditioning or 263  
holding of products produced by and for such use, consumption, 264  
or sale by persons engaged in farming, agriculture, 265  
horticulture, or floriculture, except where such property is 266  
incorporated into real property; 267

(18) Sales of drugs for a human being that may be 268  
dispensed only pursuant to a prescription; insulin as recognized 269  
in the official United States pharmacopoeia; urine and blood 270  
testing materials when used by diabetics or persons with 271  
hypoglycemia to test for glucose or acetone; hypodermic syringes 272  
and needles when used by diabetics for insulin injections; 273  
epoetin alfa when purchased for use in the treatment of persons 274  
with medical disease; hospital beds when purchased by hospitals, 275  
nursing homes, or other medical facilities; and medical oxygen 276  
and medical oxygen-dispensing equipment when purchased by 277  
hospitals, nursing homes, or other medical facilities; 278

(19) Sales of prosthetic devices, durable medical 279  
equipment for home use, or mobility enhancing equipment, when 280  
made pursuant to a prescription and when such devices or 281  
equipment are for use by a human being. 282

(20) Sales of emergency and fire protection vehicles and 283  
equipment to nonprofit organizations for use solely in providing 284  
fire protection and emergency services, including trauma care 285  
and emergency medical services, for political subdivisions of 286  
the state; 287

(21) Sales of tangible personal property manufactured in 288  
this state, if sold by the manufacturer in this state to a 289  
retailer for use in the retail business of the retailer outside 290  
of this state and if possession is taken from the manufacturer 291

by the purchaser within this state for the sole purpose of	292
immediately removing the same from this state in a vehicle owned	293
by the purchaser;	294
(22) Sales of services provided by the state or any of its	295
political subdivisions, agencies, instrumentalities,	296
institutions, or authorities, or by governmental entities of the	297
state or any of its political subdivisions, agencies,	298
instrumentalities, institutions, or authorities;	299
(23) Sales of motor vehicles to nonresidents of this state	300
under the circumstances described in division (B) of section	301
5739.029 of the Revised Code;	302
(24) Sales to persons engaged in the preparation of eggs	303
for sale of tangible personal property used or consumed directly	304
in such preparation, including such tangible personal property	305
used for cleaning, sanitizing, preserving, grading, sorting, and	306
classifying by size; packages, including material and parts for	307
packages, and machinery, equipment, and material for use in	308
packaging eggs for sale; and handling and transportation	309
equipment and parts therefor, except motor vehicles licensed to	310
operate on public highways, used in intraplant or interplant	311
transfers or shipment of eggs in the process of preparation for	312
sale, when the plant or plants within or between which such	313
transfers or shipments occur are operated by the same person.	314
"Packages" includes containers, cases, baskets, flats, fillers,	315
filler flats, cartons, closure materials, labels, and labeling	316
materials, and "packaging" means placing therein.	317
(25) (a) Sales of water to a consumer for residential use;	318
(b) Sales of water by a nonprofit corporation engaged	319
exclusively in the treatment, distribution, and sale of water to	320

consumers, if such water is delivered to consumers through pipes	321
or tubing.	322
(26) Fees charged for inspection or reinspection of motor	323
vehicles under section 3704.14 of the Revised Code;	324
(27) Sales to persons licensed to conduct a food service	325
operation pursuant to section 3717.43 of the Revised Code, of	326
tangible personal property primarily used directly for the	327
following:	328
(a) To prepare food for human consumption for sale;	329
(b) To preserve food that has been or will be prepared for	330
human consumption for sale by the food service operator, not	331
including tangible personal property used to display food for	332
selection by the consumer;	333
(c) To clean tangible personal property used to prepare or	334
serve food for human consumption for sale.	335
(28) Sales of animals by nonprofit animal adoption	336
services or county humane societies;	337
(29) Sales of services to a corporation described in	338
division (A) of section 5709.72 of the Revised Code, and sales	339
of tangible personal property that qualifies for exemption from	340
taxation under section 5709.72 of the Revised Code;	341
(30) Sales and installation of agricultural land tile, as	342
defined in division (B) (5) (a) of section 5739.01 of the Revised	343
Code;	344
(31) Sales and erection or installation of portable grain	345
bins, as defined in division (B) (5) (b) of section 5739.01 of the	346
Revised Code;	347

(32) The sale, lease, repair, and maintenance of, parts 348  
for, or items attached to or incorporated in, motor vehicles 349  
that are primarily used for transporting tangible personal 350  
property belonging to others by a person engaged in highway 351  
transportation for hire, except for packages and packaging used 352  
for the transportation of tangible personal property; 353

(33) Sales to the state headquarters of any veterans' 354  
organization in this state that is either incorporated and 355  
issued a charter by the congress of the United States or is 356  
recognized by the United States veterans administration, for use 357  
by the headquarters; 358

(34) Sales to a telecommunications service vendor, mobile 359  
telecommunications service vendor, or satellite broadcasting 360  
service vendor of tangible personal property and services used 361  
directly and primarily in transmitting, receiving, switching, or 362  
recording any interactive, one- or two-way electromagnetic 363  
communications, including voice, image, data, and information, 364  
through the use of any medium, including, but not limited to, 365  
poles, wires, cables, switching equipment, computers, and record 366  
storage devices and media, and component parts for the tangible 367  
personal property. The exemption provided in this division shall 368  
be in lieu of all other exemptions under division (B) (42) (a) or 369  
(n) of this section to which the vendor may otherwise be 370  
entitled, based upon the use of the thing purchased in providing 371  
the telecommunications, mobile telecommunications, or satellite 372  
broadcasting service. 373

(35) (a) Sales where the purpose of the consumer is to use 374  
or consume the things transferred in making retail sales and 375  
consisting of newspaper inserts, catalogues, coupons, flyers, 376  
gift certificates, or other advertising material that prices and 377

describes tangible personal property offered for retail sale.	378
(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; and of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B) (35) (a) of this section;	379 380 381 382 383 384 385
(c) Sales of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.	386 387 388 389
(d) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.	390 391 392
For purposes of division (B) (35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.	393 394 395 396 397 398 399 400
(36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;	401 402 403 404
(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer	405 406

equipment to an individual who is licensed or certified to teach 407  
in an elementary or a secondary school in this state for use by 408  
that individual in preparation for teaching elementary or 409  
secondary school students; 410

(38) Sales to a professional racing team of any of the 411  
following: 412

(a) Motor racing vehicles; 413

(b) Repair services for motor racing vehicles; 414

(c) Items of property that are attached to or incorporated 415  
in motor racing vehicles, including engines, chassis, and all 416  
other components of the vehicles, and all spare, replacement, 417  
and rebuilt parts or components of the vehicles; except not 418  
including tires, consumable fluids, paint, and accessories 419  
consisting of instrumentation sensors and related items added to 420  
the vehicle to collect and transmit data by means of telemetry 421  
and other forms of communication. 422

(39) Sales of used manufactured homes and used mobile 423  
homes, as defined in section 5739.0210 of the Revised Code, made 424  
on or after January 1, 2000; 425

(40) Sales of tangible personal property and services to a 426  
provider of electricity used or consumed directly and primarily 427  
in generating, transmitting, or distributing electricity for use 428  
by others, including property that is or is to be incorporated 429  
into and will become a part of the consumer's production, 430  
transmission, or distribution system and that retains its 431  
classification as tangible personal property after 432  
incorporation; fuel or power used in the production, 433  
transmission, or distribution of electricity; energy conversion 434  
equipment as defined in section 5727.01 of the Revised Code; and 435

tangible personal property and services used in the repair and 436  
maintenance of the production, transmission, or distribution 437  
system, including only those motor vehicles as are specially 438  
designed and equipped for such use. The exemption provided in 439  
this division shall be in lieu of all other exemptions in 440  
division (B) (42) (a) or (n) of this section to which a provider 441  
of electricity may otherwise be entitled based on the use of the 442  
tangible personal property or service purchased in generating, 443  
transmitting, or distributing electricity. 444

(41) Sales to a person providing services under division 445  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 446  
personal property and services used directly and primarily in 447  
providing taxable services under that section. 448

(42) Sales where the purpose of the purchaser is to do any 449  
of the following: 450

(a) To incorporate the thing transferred as a material or 451  
a part into tangible personal property to be produced for sale 452  
by manufacturing, assembling, processing, or refining; or to use 453  
or consume the thing transferred directly in producing tangible 454  
personal property for sale by mining, including, without 455  
limitation, the extraction from the earth of all substances that 456  
are classed geologically as minerals, production of crude oil 457  
and natural gas, or directly in the rendition of a public 458  
utility service, except that the sales tax levied by this 459  
section shall be collected upon all meals, drinks, and food for 460  
human consumption sold when transporting persons. Persons 461  
engaged in rendering services in the exploration for, and 462  
production of, crude oil and natural gas for others are deemed 463  
engaged directly in the exploration for, and production of, 464  
crude oil and natural gas. This paragraph does not exempt from 465



"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.	466 467 468
(b) To hold the thing transferred as security for the performance of an obligation of the vendor;	469 470
(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	471 472
(d) To use or consume the thing directly in commercial fishing;	473 474
(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;	475 476 477 478
(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;	479 480 481 482 483
(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;	484 485 486
(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;	487 488 489 490 491 492
(i) To use the thing transferred as qualified research and	493

development equipment;	494
(j) To use or consume the thing transferred primarily in	495
storing, transporting, mailing, or otherwise handling purchased	496
sales inventory in a warehouse, distribution center, or similar	497
facility when the inventory is primarily distributed outside	498
this state to retail stores of the person who owns or controls	499
the warehouse, distribution center, or similar facility, to	500
retail stores of an affiliated group of which that person is a	501
member, or by means of direct marketing. This division does not	502
apply to motor vehicles registered for operation on the public	503
highways. As used in this division, "affiliated group" has the	504
same meaning as in division (B) (3) (e) of section 5739.01 of the	505
Revised Code and "direct marketing" has the same meaning as in	506
division (B) (35) of this section.	507
(k) To use or consume the thing transferred to fulfill a	508
contractual obligation incurred by a warrantor pursuant to a	509
warranty provided as a part of the price of the tangible	510
personal property sold or by a vendor of a warranty, maintenance	511
or service contract, or similar agreement the provision of which	512
is defined as a sale under division (B) (7) of section 5739.01 of	513
the Revised Code;	514
(l) To use or consume the thing transferred in the	515
production of a newspaper for distribution to the public;	516
(m) To use tangible personal property to perform a service	517
listed in division (B) (3) of section 5739.01 of the Revised	518
Code, if the property is or is to be permanently transferred to	519
the consumer of the service as an integral part of the	520
performance of the service;	521
(n) To use or consume the thing transferred primarily in	522

producing tangible personal property for sale by farming, 523  
agriculture, horticulture, or floriculture. Persons engaged in 524  
rendering farming, agriculture, horticulture, or floriculture 525  
services for others are deemed engaged primarily in farming, 526  
agriculture, horticulture, or floriculture. This paragraph does 527  
not exempt from "retail sale" or "sales at retail" the sale of 528  
tangible personal property that is to be incorporated into a 529  
structure or improvement to real property. 530

(o) To use or consume the thing transferred in acquiring, 531  
formatting, editing, storing, and disseminating data or 532  
information by electronic publishing; 533

(p) To provide the thing transferred to the owner or 534  
lessee of a motor vehicle that is being repaired or serviced, if 535  
the thing transferred is a rented motor vehicle and the 536  
purchaser is reimbursed for the cost of the rented motor vehicle 537  
by a manufacturer, warrantor, or provider of a maintenance, 538  
service, or other similar contract or agreement, with respect to 539  
the motor vehicle that is being repaired or serviced. 540

As used in division (B) (42) of this section, "thing" 541  
includes all transactions included in divisions (B) (3) (a), (b), 542  
and (e) of section 5739.01 of the Revised Code. 543

(43) Sales conducted through a coin operated device that 544  
activates vacuum equipment or equipment that dispenses water, 545  
whether or not in combination with soap or other cleaning agents 546  
or wax, to the consumer for the consumer's use on the premises 547  
in washing, cleaning, or waxing a motor vehicle, provided no 548  
other personal property or personal service is provided as part 549  
of the transaction. 550

(44) Sales of replacement and modification parts for 551

engines, airframes, instruments, and interiors in, and paint 552  
for, aircraft used primarily in a fractional aircraft ownership 553  
program, and sales of services for the repair, modification, and 554  
maintenance of such aircraft, and machinery, equipment, and 555  
supplies primarily used to provide those services. 556

(45) Sales of telecommunications service that is used 557  
directly and primarily to perform the functions of a call 558  
center. As used in this division, "call center" means any 559  
physical location where telephone calls are placed or received 560  
in high volume for the purpose of making sales, marketing, 561  
customer service, technical support, or other specialized 562  
business activity, and that employs at least fifty individuals 563  
that engage in call center activities on a full-time basis, or 564  
sufficient individuals to fill fifty full-time equivalent 565  
positions. 566

(46) Sales by a telecommunications service vendor of 900 567  
service to a subscriber. This division does not apply to 568  
information services, as defined in division (FF) of section 569  
5739.01 of the Revised Code. 570

(47) Sales of value-added non-voice data service. This 571  
division does not apply to any similar service that is not 572  
otherwise a telecommunications service. 573

(48) (a) Sales of machinery, equipment, and software to a 574  
qualified direct selling entity for use in a warehouse or 575  
distribution center primarily for storing, transporting, or 576  
otherwise handling inventory that is held for sale to 577  
independent salespersons who operate as direct sellers and that 578  
is held primarily for distribution outside this state; 579

(b) As used in division (B) (48) (a) of this section: 580

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

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

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

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

(50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services

for such full flight simulators. "Full flight simulator" means a 611  
replica of a specific type, or make, model, and series of 612  
aircraft cockpit. It includes the assemblage of equipment and 613  
computer programs necessary to represent aircraft operations in 614  
ground and flight conditions, a visual system providing an out- 615  
of-the-cockpit view, and a system that provides cues at least 616  
equivalent to those of a three-degree-of-freedom motion system, 617  
and has the full range of capabilities of the systems installed 618  
in the device as described in appendices A and B of part 60 of 619  
chapter 1 of title 14 of the Code of Federal Regulations. 620

(51) Any transfer or lease of tangible personal property 621  
between the state and JobsOhio in accordance with section 622  
4313.02 of the Revised Code. 623

(52) (a) Sales to a qualifying corporation. 624

(b) As used in division (B) (52) of this section: 625

(i) "Qualifying corporation" means a nonprofit corporation 626  
organized in this state that leases from an eligible county 627  
land, buildings, structures, fixtures, and improvements to the 628  
land that are part of or used in a public recreational facility 629  
used by a major league professional athletic team or a class A 630  
to class AAA minor league affiliate of a major league 631  
professional athletic team for a significant portion of the 632  
team's home schedule, provided the following apply: 633

(I) The facility is leased from the eligible county 634  
pursuant to a lease that requires substantially all of the 635  
revenue from the operation of the business or activity conducted 636  
by the nonprofit corporation at the facility in excess of 637  
operating costs, capital expenditures, and reserves to be paid 638  
to the eligible county at least once per calendar year. 639

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

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

(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.

(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.

(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:

(a) Accepts direct payments to operate;

(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;

(c) Operates exclusively for the purpose of playing 669  
digital audio works in a commercial establishment. 670

(56) (a) Sales of the following occurring on the first 671  
Friday of August and the following Saturday and Sunday of each 672  
year, beginning in 2018: 673

(i) An item of clothing, the price of which is seventy- 674  
five dollars or less; 675

(ii) An item of school supplies, the price of which is 676  
twenty dollars or less; 677

(iii) An item of school instructional material, the price 678  
of which is twenty dollars or less. 679

(b) As used in division (B) (56) of this section: 680

(i) "Clothing" means all human wearing apparel suitable 681  
for general use. "Clothing" includes, but is not limited to, 682  
aprons, household and shop; athletic supporters; baby receiving 683  
blankets; bathing suits and caps; beach capes and coats; belts 684  
and suspenders; boots; coats and jackets; costumes; diapers, 685  
children and adult, including disposable diapers; ear muffs; 686  
footlets; formal wear; garters and garter belts; girdles; gloves 687  
and mittens for general use; hats and caps; hosiery; insoles for 688  
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 689  
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 690  
sneakers; socks and stockings; steel-toed shoes; underwear; 691  
uniforms, athletic and nonathletic; and wedding apparel. 692  
"Clothing" does not include items purchased for use in a trade 693  
or business; clothing accessories or equipment; protective 694  
equipment; sports or recreational equipment; belt buckles sold 695  
separately; costume masks sold separately; patches and emblems 696  
sold separately; sewing equipment and supplies including, but 697



not limited to, knitting needles, patterns, pins, scissors, 698  
sewing machines, sewing needles, tape measures, and thimbles; 699  
and sewing materials that become part of "clothing" including, 700  
but not limited to, buttons, fabric, lace, thread, yarn, and 701  
zippers. 702

(ii) "School supplies" means items commonly used by a 703  
student in a course of study. "School supplies" includes only 704  
the following items: binders; book bags; calculators; cellophane 705  
tape; blackboard chalk; compasses; composition books; crayons; 706  
erasers; folders, expandable, pocket, plastic, and manila; glue, 707  
paste, and paste sticks; highlighters; index cards; index card 708  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 709  
loose-leaf ruled notebook paper, copy paper, graph paper, 710  
tracing paper, manila paper, colored paper, poster board, and 711  
construction paper; pencil boxes and other school supply boxes; 712  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 713  
and writing tablets. "School supplies" does not include any item 714  
purchased for use in a trade or business. 715

(iii) "School instructional material" means written 716  
material commonly used by a student in a course of study as a 717  
reference and to learn the subject being taught. "School 718  
instructional material" includes only the following items: 719  
reference books, reference maps and globes, textbooks, and 720  
workbooks. "School instructional material" does not include any 721  
material purchased for use in a trade or business. 722

(C) For the purpose of the proper administration of this 723  
chapter, and to prevent the evasion of the tax, it is presumed 724  
that all sales made in this state are subject to the tax until 725  
the contrary is established. 726

(D) The levy of this tax on retail sales of recreation and 727

sports club service shall not prevent a municipal corporation 728  
from levying any tax on recreation and sports club dues or on 729  
any income generated by recreation and sports club dues. 730

(E) The tax collected by the vendor from the consumer 731  
under this chapter is not part of the price, but is a tax 732  
collection for the benefit of the state, and of counties levying 733  
an additional sales tax pursuant to section 5739.021 or 5739.026 734  
of the Revised Code and of transit authorities levying an 735  
additional sales tax pursuant to section 5739.023 of the Revised 736  
Code. Except for the discount authorized under section 5739.12 737  
of the Revised Code and the effects of any rounding pursuant to 738  
section 5703.055 of the Revised Code, no person other than the 739  
state or such a county or transit authority shall derive any 740  
benefit from the collection or payment of the tax levied by this 741  
section or section 5739.021, 5739.023, or 5739.026 of the 742  
Revised Code. 743

**Sec. 5739.03.** (A) Except as provided in section 5739.05 or 744  
section 5739.051 of the Revised Code, the tax imposed by or 745  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 746  
the Revised Code shall be paid by the consumer to the vendor, 747  
and each vendor shall collect from the consumer, as a trustee 748  
for the state of Ohio, the full and exact amount of the tax 749  
payable on each taxable sale, in the manner and at the times 750  
provided as follows: 751

(1) If the price is, at or prior to the provision of the 752  
service or the delivery of possession of the thing sold to the 753  
consumer, paid in currency passed from hand to hand by the 754  
consumer or the consumer's agent to the vendor or the vendor's 755  
agent, the vendor or the vendor's agent shall collect the tax 756  
with and at the same time as the price; 757

(2) If the price is otherwise paid or to be paid, the vendor or the vendor's agent shall, at or prior to the provision of the service or the delivery of possession of the thing sold to the consumer, charge the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code to the account of the consumer, which amount shall be collected by the vendor from the consumer in addition to the price. Such sale shall be reported on and the amount of the tax applicable thereto shall be remitted with the return for the period in which the sale is made, and the amount of the tax shall become a legal charge in favor of the vendor and against the consumer.

(B) (1) (a) If any sale is claimed to be exempt under division (E) of section 5739.01 of the Revised Code or under section 5739.02 of the Revised Code, with the exception of divisions (B) (1) to (11) ~~or~~, (28), or (56) of section 5739.02 of the Revised Code, or if the consumer claims the transaction is not a taxable sale due to one or more of the exclusions provided under divisions (JJ) (1) to (5) of section 5739.01 of the Revised Code, the consumer must provide to the vendor, and the vendor must obtain from the consumer, a certificate specifying the reason that the sale is not legally subject to the tax. The certificate shall be in such form, and shall be provided either in a hard copy form or electronic form, as the tax commissioner prescribes.

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or

Chapter 5741. of the Revised Code. Relief under this division	789
from liability does not apply to any of the following:	790
(i) A vendor that fraudulently fails to collect tax;	791
(ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;	792 793
(iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;	794 795 796 797 798 799 800 801 802
(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.	803 804 805 806 807
(2) The vendor shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.	808 809 810
(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section.	811 812 813 814 815
(4) If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it	816 817

shall be presumed that the tax applies. Failure to have so 818  
provided or obtained a certificate shall not preclude a vendor, 819  
within one hundred twenty days after the tax commissioner gives 820  
written notice of intent to levy an assessment, from either 821  
establishing that the sale is not subject to the tax, or 822  
obtaining, in good faith, a fully completed exemption 823  
certificate. 824

(5) Certificates need not be obtained nor provided where 825  
the identity of the consumer is such that the transaction is 826  
never subject to the tax imposed or where the item of tangible 827  
personal property sold or the service provided is never subject 828  
to the tax imposed, regardless of use, or when the sale is in 829  
interstate commerce. 830

(6) If a transaction is claimed to be exempt under 831  
division (B) (13) of section 5739.02 of the Revised Code, the 832  
contractor shall obtain certification of the claimed exemption 833  
from the contractee. This certification shall be in addition to 834  
an exemption certificate provided by the contractor to the 835  
vendor. A contractee that provides a certification under this 836  
division shall be deemed to be the consumer of all items 837  
purchased by the contractor under the claim of exemption, if it 838  
is subsequently determined that the exemption is not properly 839  
claimed. The certification shall be in such form as the tax 840  
commissioner prescribes. 841

(C) As used in this division, "contractee" means a person 842  
who seeks to enter or enters into a contract or agreement with a 843  
contractor or vendor for the construction of real property or 844  
for the sale and installation onto real property of tangible 845  
personal property. 846

Any contractor or vendor may request from any contractee a 847

certification of what portion of the property to be transferred 848  
under such contract or agreement is to be incorporated into the 849  
realty and what portion will retain its status as tangible 850  
personal property after installation is completed. The 851  
contractor or vendor shall request the certification by 852  
certified mail delivered to the contractee, return receipt 853  
requested. Upon receipt of such request and prior to entering 854  
into the contract or agreement, the contractee shall provide to 855  
the contractor or vendor a certification sufficiently detailed 856  
to enable the contractor or vendor to ascertain the resulting 857  
classification of all materials purchased or fabricated by the 858  
contractor or vendor and transferred to the contractee. This 859  
requirement applies to a contractee regardless of whether the 860  
contractee holds a direct payment permit under section 5739.031 861  
of the Revised Code or provides to the contractor or vendor an 862  
exemption certificate as provided under this section. 863

For the purposes of the taxes levied by this chapter and 864  
Chapter 5741. of the Revised Code, the contractor or vendor may 865  
in good faith rely on the contractee's certification. 866  
Notwithstanding division (B) of section 5739.01 of the Revised 867  
Code, if the tax commissioner determines that certain property 868  
certified by the contractee as tangible personal property 869  
pursuant to this division is, in fact, real property, the 870  
contractee shall be considered to be the consumer of all 871  
materials so incorporated into that real property and shall be 872  
liable for the applicable tax, and the contractor or vendor 873  
shall be excused from any liability on those materials. 874

If a contractee fails to provide such certification upon 875  
the request of the contractor or vendor, the contractor or 876  
vendor shall comply with the provisions of this chapter and 877  
Chapter 5741. of the Revised Code without the certification. If 878

the tax commissioner determines that such compliance has been 879  
performed in good faith and that certain property treated as 880  
tangible personal property by the contractor or vendor is, in 881  
fact, real property, the contractee shall be considered to be 882  
the consumer of all materials so incorporated into that real 883  
property and shall be liable for the applicable tax, and the 884  
construction contractor or vendor shall be excused from any 885  
liability on those materials. 886

This division does not apply to any contract or agreement 887  
where the tax commissioner determines as a fact that a 888  
certification under this division was made solely on the 889  
decision or advice of the contractor or vendor. 890

(D) Notwithstanding division (B) of section 5739.01 of the 891  
Revised Code, whenever the total rate of tax imposed under this 892  
chapter is increased after the date after a construction 893  
contract is entered into, the contractee shall reimburse the 894  
construction contractor for any additional tax paid on tangible 895  
property consumed or services received pursuant to the contract. 896

(E) A vendor who files a petition for reassessment 897  
contesting the assessment of tax on sales for which the vendor 898  
obtained no valid exemption certificates and for which the 899  
vendor failed to establish that the sales were properly not 900  
subject to the tax during the one-hundred-twenty-day period 901  
allowed under division (B) of this section, may present to the 902  
tax commissioner additional evidence to prove that the sales 903  
were properly subject to a claim of exception or exemption. The 904  
vendor shall file such evidence within ninety days of the 905  
receipt by the vendor of the notice of assessment, except that, 906  
upon application and for reasonable cause, the period for 907  
submitting such evidence shall be extended thirty days. 908

The commissioner shall consider such additional evidence 909  
in reaching the final determination on the assessment and 910  
petition for reassessment. 911

(F) Whenever a vendor refunds the price, minus any 912  
separately stated delivery charge, of an item of tangible 913  
personal property on which the tax imposed under this chapter 914  
has been paid, the vendor shall also refund the amount of tax 915  
paid, minus the amount of tax attributable to the delivery 916  
charge. 917

**Sec. 5739.05.** (A) (1) The tax commissioner shall enforce 918  
and administer sections 5739.01 to 5739.31 of the Revised Code, 919  
which are hereby declared to be sections which the commissioner 920  
is required to administer within the meaning of sections 5703.17 921  
to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. 922  
The commissioner may adopt and promulgate, in accordance with 923  
sections 119.01 to 119.13 of the Revised Code, such rules as the 924  
commissioner deems necessary to administer sections 5739.01 to 925  
5739.31 of the Revised Code. 926

(2) On or before the first day of May of each year, the 927  
commissioner shall make available to vendors a notice explaining 928  
the three-day exemption period required under division (B) (56) 929  
of section 5739.02 of the Revised Code. 930

(B) Upon application, the commissioner may authorize a 931  
vendor to pay on a predetermined basis the tax levied by or 932  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 933  
the Revised Code upon sales of things produced or distributed or 934  
services provided by such vendor, and the commissioner may waive 935  
the collection of the tax from the consumer. The commissioner 936  
shall not grant such authority unless the commissioner finds 937  
that the granting of the authority would improve compliance and 938



increase the efficiency of the administration of the tax. The 939  
person to whom such authority is granted shall post a notice, if 940  
required by the commissioner, at the location where the product 941  
is offered for sale that the tax is included in the selling 942  
price. The commissioner may adopt rules to administer this 943  
division. 944

(C) Upon application, the commissioner may authorize a 945  
vendor to remit, on the basis of a prearranged agreement under 946  
this division, the tax levied by section 5739.02 or pursuant to 947  
section 5739.021, 5739.023, or 5739.026 of the Revised Code. The 948  
proportions and ratios in a prearranged agreement shall be 949  
determined either by a test check conducted by the commissioner 950  
under terms and conditions agreed to by the commissioner and the 951  
vendor or by any other method agreed upon by the vendor and the 952  
commissioner. If the parties are unable to agree to the terms 953  
and conditions of the test check or other method, the 954  
application shall be denied. 955

If used, the test check shall determine the proportion 956  
that taxable retail sales bear to all of the vendor's retail 957  
sales and the ratio which the tax required to be collected under 958  
sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 959  
Revised Code bears to the receipts from the vendor's taxable 960  
retail sales. 961

The vendor's liability for remitting the tax shall be 962  
based solely upon the proportions and ratios established in the 963  
agreement until such time that the vendor or the commissioner 964  
believes that the nature of the vendor's business has so changed 965  
as to make the agreement no longer representative. The 966  
commissioner may give notice to the vendor at any time that the 967  
authorization is revoked or the vendor may notify the 968

commissioner that the vendor no longer elects to report under 969  
the authorization. Such notice shall be delivered to the other 970  
party personally or by registered mail. The revocation or 971  
cancellation is effective the last day of the month in which the 972  
vendor or the commissioner receives the notice. 973

**Section 2.** That existing sections 5739.02, 5739.03, and 974  
5739.05 of the Revised Code are hereby repealed. 975