

As Introduced

**130th General Assembly
Regular Session
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S. B. No. 243

Senator Bacon

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A B I L L

To amend sections 5739.02 and 5739.05 of the Revised 1
Code to provide a three-day sales tax "holiday" 2
each August during which sales of back-to-school 3
clothing, school supplies, personal computers, and 4
personal computer accessories are exempt from 5
sales and use taxes. 6

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

Section 1. That sections 5739.02 and 5739.05 of the Revised 7
Code be amended to read as follows: 8

Sec. 5739.02. For the purpose of providing revenue with which 9
to meet the needs of the state, for the use of the general revenue 10
fund of the state, for the purpose of securing a thorough and 11
efficient system of common schools throughout the state, for the 12
purpose of affording revenues, in addition to those from general 13
property taxes, permitted under constitutional limitations, and 14
from other sources, for the support of local governmental 15
functions, and for the purpose of reimbursing the state for the 16
expense of administering this chapter, an excise tax is hereby 17
levied on each retail sale made 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 of 24
more than thirty days or an indefinite term with a minimum period 25
of more than thirty days, of any motor vehicles designed by the 26
manufacturer to carry a load of not more than one ton, watercraft, 27
outboard motor, or aircraft, or of any tangible personal property, 28
other than motor vehicles designed by the manufacturer to carry a 29
load of more than one ton, to be used by the lessee or renter 30
primarily for business purposes, the tax shall be collected by the 31
vendor at the time the lease or rental is consummated and shall be 32
calculated by the vendor on the basis of the total amount to be 33
paid by the lessee or renter under the lease agreement. If the 34
total amount of the consideration for the lease or rental includes 35
amounts that are not calculated at the time the lease or rental is 36
executed, the tax shall be calculated and collected by the vendor 37
at the time such amounts are billed to the lessee or renter. In 38
the case of an open-end lease or rental, the tax shall be 39
calculated by the vendor on the basis of the total amount to be 40
paid during the initial fixed term of the lease or rental, and for 41
each subsequent renewal period as it comes due. As used in this 42
division, "motor vehicle" has the same meaning as in section 43
4501.01 of the Revised Code, and "watercraft" includes an outdrive 44
unit attached to the watercraft. 45

A lease with a renewal clause and a termination penalty or 46
similar provision that applies if the renewal clause is not 47
exercised is presumed to be a sham transaction. In such a case, 48
the tax shall be calculated and paid on the basis of the entire 49
length of the lease period, including any renewal periods, until 50
the termination penalty or similar provision no longer applies. 51
The taxpayer shall bear the burden, by a preponderance of the 52

evidence, that the transaction or series of transactions is not a 53
sham transaction. 54

(3) Except as provided in division (A)(2) of this section, in 55
the case of a sale, the price of which consists in whole or in 56
part of the lease or rental of tangible personal property, the tax 57
shall be measured by the installments of that lease or rental. 58

(4) In the case of a sale of a physical fitness facility 59
service or recreation and sports club service, the price of which 60
consists in whole or in part of a membership for the receipt of 61
the benefit of the service, the tax applicable to the sale shall 62
be measured by the installments thereof. 63

(B) The tax does not apply to the following: 64

(1) Sales to the state or any of its political subdivisions, 65
or to any other state or its political subdivisions if the laws of 66
that state exempt from taxation sales made to this state and its 67
political subdivisions; 68

(2) Sales of food for human consumption off the premises 69
where sold; 70

(3) Sales of food sold to students only in a cafeteria, 71
dormitory, fraternity, or sorority maintained in a private, 72
public, or parochial school, college, or university; 73

(4) Sales of newspapers and sales or transfers of magazines 74
distributed as controlled circulation publications; 75

(5) The furnishing, preparing, or serving of meals without 76
charge by an employer to an employee provided the employer records 77
the meals as part compensation for services performed or work 78
done; 79

(6) Sales of motor fuel upon receipt, use, distribution, or 80
sale of which in this state a tax is imposed by the law of this 81
state, but this exemption shall not apply to the sale of motor 82

fuel on which a refund of the tax is allowable under division (A) 83
of section 5735.14 of the Revised Code; and the tax commissioner 84
may deduct the amount of tax levied by this section applicable to 85
the price of motor fuel when granting a refund of motor fuel tax 86
pursuant to division (A) of section 5735.14 of the Revised Code 87
and shall cause the amount deducted to be paid into the general 88
revenue fund of this state; 89

(7) Sales of natural gas by a natural gas company, of water 90
by a water-works company, or of steam by a heating company, if in 91
each case the thing sold is delivered to consumers through pipes 92
or conduits, and all sales of communications services by a 93
telegraph company, all terms as defined in section 5727.01 of the 94
Revised Code, and sales of electricity delivered through wires; 95

(8) Casual sales by a person, or auctioneer employed directly 96
by the person to conduct such sales, except as to such sales of 97
motor vehicles, watercraft or outboard motors required to be 98
titled under section 1548.06 of the Revised Code, watercraft 99
documented with the United States coast guard, snowmobiles, and 100
all-purpose vehicles as defined in section 4519.01 of the Revised 101
Code; 102

(9)(a) Sales of services or tangible personal property, other 103
than motor vehicles, mobile homes, and manufactured homes, by 104
churches, organizations exempt from taxation under section 105
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 106
organizations operated exclusively for charitable purposes as 107
defined in division (B)(12) of this section, provided that the 108
number of days on which such tangible personal property or 109
services, other than items never subject to the tax, are sold does 110
not exceed six in any calendar year, except as otherwise provided 111
in division (B)(9)(b) of this section. If the number of days on 112
which such sales are made exceeds six in any calendar year, the 113
church or organization shall be considered to be engaged in 114

business and all subsequent sales by it shall be subject to the 115
tax. In counting the number of days, all sales by groups within a 116
church or within an organization shall be considered to be sales 117
of that church or organization. 118

(b) The limitation on the number of days on which tax-exempt 119
sales may be made by a church or organization under division 120
(B)(9)(a) of this section does not apply to sales made by student 121
clubs and other groups of students of a primary or secondary 122
school, or a parent-teacher association, booster group, or similar 123
organization that raises money to support or fund curricular or 124
extracurricular activities of a primary or secondary school. 125

(c) Divisions (B)(9)(a) and (b) of this section do not apply 126
to sales by a noncommercial educational radio or television 127
broadcasting station. 128

(10) Sales not within the taxing power of this state under 129
the Constitution or laws of the United States or the Constitution 130
of this state; 131

(11) Except for transactions that are sales under division 132
(B)(3)(r) of section 5739.01 of the Revised Code, the 133
transportation of persons or property, unless the transportation 134
is by a private investigation and security service; 135

(12) Sales of tangible personal property or services to 136
churches, to organizations exempt from taxation under section 137
501(c)(3) of the Internal Revenue Code of 1986, and to any other 138
nonprofit organizations operated exclusively for charitable 139
purposes in this state, no part of the net income of which inures 140
to the benefit of any private shareholder or individual, and no 141
substantial part of the activities of which consists of carrying 142
on propaganda or otherwise attempting to influence legislation; 143
sales to offices administering one or more homes for the aged or 144
one or more hospital facilities exempt under section 140.08 of the 145

Revised Code; and sales to organizations described in division (D) 146
of section 5709.12 of the Revised Code. 147

"Charitable purposes" means the relief of poverty; the 148
improvement of health through the alleviation of illness, disease, 149
or injury; the operation of an organization exclusively for the 150
provision of professional, laundry, printing, and purchasing 151
services to hospitals or charitable institutions; the operation of 152
a home for the aged, as defined in section 5701.13 of the Revised 153
Code; the operation of a radio or television broadcasting station 154
that is licensed by the federal communications commission as a 155
noncommercial educational radio or television station; the 156
operation of a nonprofit animal adoption service or a county 157
humane society; the promotion of education by an institution of 158
learning that maintains a faculty of qualified instructors, 159
teaches regular continuous courses of study, and confers a 160
recognized diploma upon completion of a specific curriculum; the 161
operation of a parent-teacher association, booster group, or 162
similar organization primarily engaged in the promotion and 163
support of the curricular or extracurricular activities of a 164
primary or secondary school; the operation of a community or area 165
center in which presentations in music, dramatics, the arts, and 166
related fields are made in order to foster public interest and 167
education therein; the production of performances in music, 168
dramatics, and the arts; or the promotion of education by an 169
organization engaged in carrying on research in, or the 170
dissemination of, scientific and technological knowledge and 171
information primarily for the public. 172

Nothing in this division shall be deemed to exempt sales to 173
any organization for use in the operation or carrying on of a 174
trade or business, or sales to a home for the aged for use in the 175
operation of independent living facilities as defined in division 176
(A) of section 5709.12 of the Revised Code. 177

(13) Building and construction materials and services sold to 178
construction contractors for incorporation into a structure or 179
improvement to real property under a construction contract with 180
this state or a political subdivision of this state, or with the 181
United States government or any of its agencies; building and 182
construction materials and services sold to construction 183
contractors for incorporation into a structure or improvement to 184
real property that are accepted for ownership by this state or any 185
of its political subdivisions, or by the United States government 186
or any of its agencies at the time of completion of the structures 187
or improvements; building and construction materials sold to 188
construction contractors for incorporation into a horticulture 189
structure or livestock structure for a person engaged in the 190
business of horticulture or producing livestock; building 191
materials and services sold to a construction contractor for 192
incorporation into a house of public worship or religious 193
education, or a building used exclusively for charitable purposes 194
under a construction contract with an organization whose purpose 195
is as described in division (B)(12) of this section; building 196
materials and services sold to a construction contractor for 197
incorporation into a building under a construction contract with 198
an organization exempt from taxation under section 501(c)(3) of 199
the Internal Revenue Code of 1986 when the building is to be used 200
exclusively for the organization's exempt purposes; building and 201
construction materials sold for incorporation into the original 202
construction of a sports facility under section 307.696 of the 203
Revised Code; building and construction materials and services 204
sold to a construction contractor for incorporation into real 205
property outside this state if such materials and services, when 206
sold to a construction contractor in the state in which the real 207
property is located for incorporation into real property in that 208
state, would be exempt from a tax on sales levied by that state; 209
and, until one calendar year after the construction of a 210

convention center that qualifies for property tax exemption under 211
section 5709.084 of the Revised Code is completed, building and 212
construction materials and services sold to a construction 213
contractor for incorporation into the real property comprising 214
that convention center; 215

(14) Sales of ships or vessels or rail rolling stock used or 216
to be used principally in interstate or foreign commerce, and 217
repairs, alterations, fuel, and lubricants for such ships or 218
vessels or rail rolling stock; 219

(15) Sales to persons primarily engaged in any of the 220
activities mentioned in division (B)(42)(a), (g), or (h) of this 221
section, to persons engaged in making retail sales, or to persons 222
who purchase for sale from a manufacturer tangible personal 223
property that was produced by the manufacturer in accordance with 224
specific designs provided by the purchaser, of packages, including 225
material, labels, and parts for packages, and of machinery, 226
equipment, and material for use primarily in packaging tangible 227
personal property produced for sale, including any machinery, 228
equipment, and supplies used to make labels or packages, to 229
prepare packages or products for labeling, or to label packages or 230
products, by or on the order of the person doing the packaging, or 231
sold at retail. "Packages" includes bags, baskets, cartons, 232
crates, boxes, cans, bottles, bindings, wrappings, and other 233
similar devices and containers, but does not include motor 234
vehicles or bulk tanks, trailers, or similar devices attached to 235
motor vehicles. "Packaging" means placing in a package. Division 236
(B)(15) of this section does not apply to persons engaged in 237
highway transportation for hire. 238

(16) Sales of food to persons using supplemental nutrition 239
assistance program benefits to purchase the food. As used in this 240
division, "food" has the same meaning as in 7 U.S.C. 2012 and 241
federal regulations adopted pursuant to the Food and Nutrition Act 242

of 2008. 243

(17) Sales to persons engaged in farming, agriculture, 244
horticulture, or floriculture, of tangible personal property for 245
use or consumption primarily in the production by farming, 246
agriculture, horticulture, or floriculture of other tangible 247
personal property for use or consumption primarily in the 248
production of tangible personal property for sale by farming, 249
agriculture, horticulture, or floriculture; or material and parts 250
for incorporation into any such tangible personal property for use 251
or consumption in production; and of tangible personal property 252
for such use or consumption in the conditioning or holding of 253
products produced by and for such use, consumption, or sale by 254
persons engaged in farming, agriculture, horticulture, or 255
floriculture, except where such property is incorporated into real 256
property; 257

(18) Sales of drugs for a human being that may be dispensed 258
only pursuant to a prescription; insulin as recognized in the 259
official United States pharmacopoeia; urine and blood testing 260
materials when used by diabetics or persons with hypoglycemia to 261
test for glucose or acetone; hypodermic syringes and needles when 262
used by diabetics for insulin injections; epoetin alfa when 263
purchased for use in the treatment of persons with medical 264
disease; hospital beds when purchased by hospitals, nursing homes, 265
or other medical facilities; and medical oxygen and medical 266
oxygen-dispensing equipment when purchased by hospitals, nursing 267
homes, or other medical facilities; 268

(19) Sales of prosthetic devices, durable medical equipment 269
for home use, or mobility enhancing equipment, when made pursuant 270
to a prescription and when such devices or equipment are for use 271
by a human being. 272

(20) Sales of emergency and fire protection vehicles and 273
equipment to nonprofit organizations for use solely in providing 274

fire protection and emergency services, including trauma care and 275
emergency medical services, for political subdivisions of the 276
state; 277

(21) Sales of tangible personal property manufactured in this 278
state, if sold by the manufacturer in this state to a retailer for 279
use in the retail business of the retailer outside of this state 280
and if possession is taken from the manufacturer by the purchaser 281
within this state for the sole purpose of immediately removing the 282
same from this state in a vehicle owned by the purchaser; 283

(22) Sales of services provided by the state or any of its 284
political subdivisions, agencies, instrumentalities, institutions, 285
or authorities, or by governmental entities of the state or any of 286
its political subdivisions, agencies, instrumentalities, 287
institutions, or authorities; 288

(23) Sales of motor vehicles to nonresidents of this state 289
under the circumstances described in division (B) of section 290
5739.029 of the Revised Code; 291

(24) Sales to persons engaged in the preparation of eggs for 292
sale of tangible personal property used or consumed directly in 293
such preparation, including such tangible personal property used 294
for cleaning, sanitizing, preserving, grading, sorting, and 295
classifying by size; packages, including material and parts for 296
packages, and machinery, equipment, and material for use in 297
packaging eggs for sale; and handling and transportation equipment 298
and parts therefor, except motor vehicles licensed to operate on 299
public highways, used in intraplant or interplant transfers or 300
shipment of eggs in the process of preparation for sale, when the 301
plant or plants within or between which such transfers or 302
shipments occur are operated by the same person. "Packages" 303
includes containers, cases, baskets, flats, fillers, filler flats, 304
cartons, closure materials, labels, and labeling materials, and 305
"packaging" means placing therein. 306

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| (25)(a) Sales of water to a consumer for residential use; | 307 |
| (b) Sales of water by a nonprofit corporation engaged | 308 |
| exclusively in the treatment, distribution, and sale of water to | 309 |
| consumers, if such water is delivered to consumers through pipes | 310 |
| or tubing. | 311 |
| (26) Fees charged for inspection or reinspection of motor | 312 |
| vehicles under section 3704.14 of the Revised Code; | 313 |
| (27) Sales to persons licensed to conduct a food service | 314 |
| operation pursuant to section 3717.43 of the Revised Code, of | 315 |
| tangible personal property primarily used directly for the | 316 |
| following: | 317 |
| (a) To prepare food for human consumption for sale; | 318 |
| (b) To preserve food that has been or will be prepared for | 319 |
| human consumption for sale by the food service operator, not | 320 |
| including tangible personal property used to display food for | 321 |
| selection by the consumer; | 322 |
| (c) To clean tangible personal property used to prepare or | 323 |
| serve food for human consumption for sale. | 324 |
| (28) Sales of animals by nonprofit animal adoption services | 325 |
| or county humane societies; | 326 |
| (29) Sales of services to a corporation described in division | 327 |
| (A) of section 5709.72 of the Revised Code, and sales of tangible | 328 |
| personal property that qualifies for exemption from taxation under | 329 |
| section 5709.72 of the Revised Code; | 330 |
| (30) Sales and installation of agricultural land tile, as | 331 |
| defined in division (B)(5)(a) of section 5739.01 of the Revised | 332 |
| Code; | 333 |
| (31) Sales and erection or installation of portable grain | 334 |
| bins, as defined in division (B)(5)(b) of section 5739.01 of the | 335 |
| Revised Code; | 336 |

(32) The sale, lease, repair, and maintenance of, parts for, 337
or items attached to or incorporated in, motor vehicles that are 338
primarily used for transporting tangible personal property 339
belonging to others by a person engaged in highway transportation 340
for hire, except for packages and packaging used for the 341
transportation of tangible personal property; 342

(33) Sales to the state headquarters of any veterans' 343
organization in this state that is either incorporated and issued 344
a charter by the congress of the United States or is recognized by 345
the United States veterans administration, for use by the 346
headquarters; 347

(34) Sales to a telecommunications service vendor, mobile 348
telecommunications service vendor, or satellite broadcasting 349
service vendor of tangible personal property and services used 350
directly and primarily in transmitting, receiving, switching, or 351
recording any interactive, one- or two-way electromagnetic 352
communications, including voice, image, data, and information, 353
through the use of any medium, including, but not limited to, 354
poles, wires, cables, switching equipment, computers, and record 355
storage devices and media, and component parts for the tangible 356
personal property. The exemption provided in this division shall 357
be in lieu of all other exemptions under division (B)(42)(a) or 358
(n) of this section to which the vendor may otherwise be entitled, 359
based upon the use of the thing purchased in providing the 360
telecommunications, mobile telecommunications, or satellite 361
broadcasting service. 362

(35)(a) Sales where the purpose of the consumer is to use or 363
consume the things transferred in making retail sales and 364
consisting of newspaper inserts, catalogues, coupons, flyers, gift 365
certificates, or other advertising material that prices and 366
describes tangible personal property offered for retail sale. 367

(b) Sales to direct marketing vendors of preliminary 368

materials such as photographs, artwork, and typesetting that will 369
be used in printing advertising material; and of printed matter 370
that offers free merchandise or chances to win sweepstake prizes 371
and that is mailed to potential customers with advertising 372
material described in division (B)(35)(a) of this section; 373

(c) Sales of equipment such as telephones, computers, 374
facsimile machines, and similar tangible personal property 375
primarily used to accept orders for direct marketing retail sales. 376

(d) Sales of automatic food vending machines that preserve 377
food with a shelf life of forty-five days or less by refrigeration 378
and dispense it to the consumer. 379

For purposes of division (B)(35) of this section, "direct 380
marketing" means the method of selling where consumers order 381
tangible personal property by United States mail, delivery 382
service, or telecommunication and the vendor delivers or ships the 383
tangible personal property sold to the consumer from a warehouse, 384
catalogue distribution center, or similar fulfillment facility by 385
means of the United States mail, delivery service, or common 386
carrier. 387

(36) Sales to a person engaged in the business of 388
horticulture or producing livestock of materials to be 389
incorporated into a horticulture structure or livestock structure; 390

(37) Sales of personal computers, computer monitors, computer 391
keyboards, modems, and other peripheral computer equipment to an 392
individual who is licensed or certified to teach in an elementary 393
or a secondary school in this state for use by that individual in 394
preparation for teaching elementary or secondary school students; 395

(38) Sales to a professional racing team of any of the 396
following: 397

(a) Motor racing vehicles; 398

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| (b) Repair services for motor racing vehicles; | 399 |
| (c) Items of property that are attached to or incorporated in | 400 |
| motor racing vehicles, including engines, chassis, and all other | 401 |
| components of the vehicles, and all spare, replacement, and | 402 |
| rebuilt parts or components of the vehicles; except not including | 403 |
| tires, consumable fluids, paint, and accessories consisting of | 404 |
| instrumentation sensors and related items added to the vehicle to | 405 |
| collect and transmit data by means of telemetry and other forms of | 406 |
| communication. | 407 |
| (39) Sales of used manufactured homes and used mobile homes, | 408 |
| as defined in section 5739.0210 of the Revised Code, made on or | 409 |
| after January 1, 2000; | 410 |
| (40) Sales of tangible personal property and services to a | 411 |
| provider of electricity used or consumed directly and primarily in | 412 |
| generating, transmitting, or distributing electricity for use by | 413 |
| others, including property that is or is to be incorporated into | 414 |
| and will become a part of the consumer's production, transmission, | 415 |
| or distribution system and that retains its classification as | 416 |
| tangible personal property after incorporation; fuel or power used | 417 |
| in the production, transmission, or distribution of electricity; | 418 |
| energy conversion equipment as defined in section 5727.01 of the | 419 |
| Revised Code; and tangible personal property and services used in | 420 |
| the repair and maintenance of the production, transmission, or | 421 |
| distribution system, including only those motor vehicles as are | 422 |
| specially designed and equipped for such use. The exemption | 423 |
| provided in this division shall be in lieu of all other exemptions | 424 |
| in division (B)(42)(a) or (n) of this section to which a provider | 425 |
| of electricity may otherwise be entitled based on the use of the | 426 |
| tangible personal property or service purchased in generating, | 427 |
| transmitting, or distributing electricity. | 428 |
| (41) Sales to a person providing services under division | 429 |
| (B)(3)(r) of section 5739.01 of the Revised Code of tangible | 430 |

personal property and services used directly and primarily in 431
providing taxable services under that section. 432

(42) Sales where the purpose of the purchaser is to do any of 433
the following: 434

(a) To incorporate the thing transferred as a material or a 435
part into tangible personal property to be produced for sale by 436
manufacturing, assembling, processing, or refining; or to use or 437
consume the thing transferred directly in producing tangible 438
personal property for sale by mining, including, without 439
limitation, the extraction from the earth of all substances that 440
are classed geologically as minerals, production of crude oil and 441
natural gas, or directly in the rendition of a public utility 442
service, except that the sales tax levied by this section shall be 443
collected upon all meals, drinks, and food for human consumption 444
sold when transporting persons. Persons engaged in rendering 445
services in the exploration for, and production of, crude oil and 446
natural gas for others are deemed engaged directly in the 447
exploration for, and production of, crude oil and natural gas. 448
This paragraph does not exempt from "retail sale" or "sales at 449
retail" the sale of tangible personal property that is to be 450
incorporated into a structure or improvement to real property. 451

(b) To hold the thing transferred as security for the 452
performance of an obligation of the vendor; 453

(c) To resell, hold, use, or consume the thing transferred as 454
evidence of a contract of insurance; 455

(d) To use or consume the thing directly in commercial 456
fishing; 457

(e) To incorporate the thing transferred as a material or a 458
part into, or to use or consume the thing transferred directly in 459
the production of, magazines distributed as controlled circulation 460
publications; 461

(f) To use or consume the thing transferred in the production 462
and preparation in suitable condition for market and sale of 463
printed, imprinted, overprinted, lithographic, multilithic, 464
blueprinted, photostatic, or other productions or reproductions of 465
written or graphic matter; 466

(g) To use the thing transferred, as described in section 467
5739.011 of the Revised Code, primarily in a manufacturing 468
operation to produce tangible personal property for sale; 469

(h) To use the benefit of a warranty, maintenance or service 470
contract, or similar agreement, as described in division (B)(7) of 471
section 5739.01 of the Revised Code, to repair or maintain 472
tangible personal property, if all of the property that is the 473
subject of the warranty, contract, or agreement would not be 474
subject to the tax imposed by this section; 475

(i) To use the thing transferred as qualified research and 476
development equipment; 477

(j) To use or consume the thing transferred primarily in 478
storing, transporting, mailing, or otherwise handling purchased 479
sales inventory in a warehouse, distribution center, or similar 480
facility when the inventory is primarily distributed outside this 481
state to retail stores of the person who owns or controls the 482
warehouse, distribution center, or similar facility, to retail 483
stores of an affiliated group of which that person is a member, or 484
by means of direct marketing. This division does not apply to 485
motor vehicles registered for operation on the public highways. As 486
used in this division, "affiliated group" has the same meaning as 487
in division (B)(3)(e) of section 5739.01 of the Revised Code and 488
"direct marketing" has the same meaning as in division (B)(35) of 489
this section. 490

(k) To use or consume the thing transferred to fulfill a 491
contractual obligation incurred by a warrantor pursuant to a 492

warranty provided as a part of the price of the tangible personal 493
property sold or by a vendor of a warranty, maintenance or service 494
contract, or similar agreement the provision of which is defined 495
as a sale under division (B)(7) of section 5739.01 of the Revised 496
Code; 497

(l) To use or consume the thing transferred in the production 498
of a newspaper for distribution to the public; 499

(m) To use tangible personal property to perform a service 500
listed in division (B)(3) of section 5739.01 of the Revised Code, 501
if the property is or is to be permanently transferred to the 502
consumer of the service as an integral part of the performance of 503
the service; 504

(n) To use or consume the thing transferred primarily in 505
producing tangible personal property for sale by farming, 506
agriculture, horticulture, or floriculture. Persons engaged in 507
rendering farming, agriculture, horticulture, or floriculture 508
services for others are deemed engaged primarily in farming, 509
agriculture, horticulture, or floriculture. This paragraph does 510
not exempt from "retail sale" or "sales at retail" the sale of 511
tangible personal property that is to be incorporated into a 512
structure or improvement to real property. 513

(o) To use or consume the thing transferred in acquiring, 514
formatting, editing, storing, and disseminating data or 515
information by electronic publishing. 516

As used in division (B)(42) of this section, "thing" includes 517
all transactions included in divisions (B)(3)(a), (b), and (e) of 518
section 5739.01 of the Revised Code. 519

(43) Sales conducted through a coin operated device that 520
activates vacuum equipment or equipment that dispenses water, 521
whether or not in combination with soap or other cleaning agents 522
or wax, to the consumer for the consumer's use on the premises in 523

washing, cleaning, or waxing a motor vehicle, provided no other 524
personal property or personal service is provided as part of the 525
transaction. 526

(44) Sales of replacement and modification parts for engines, 527
airframes, instruments, and interiors in, and paint for, aircraft 528
used primarily in a fractional aircraft ownership program, and 529
sales of services for the repair, modification, and maintenance of 530
such aircraft, and machinery, equipment, and supplies primarily 531
used to provide those services. 532

(45) Sales of telecommunications service that is used 533
directly and primarily to perform the functions of a call center. 534
As used in this division, "call center" means any physical 535
location where telephone calls are placed or received in high 536
volume for the purpose of making sales, marketing, customer 537
service, technical support, or other specialized business 538
activity, and that employs at least fifty individuals that engage 539
in call center activities on a full-time basis, or sufficient 540
individuals to fill fifty full-time equivalent positions. 541

(46) Sales by a telecommunications service vendor of 900 542
service to a subscriber. This division does not apply to 543
information services, as defined in division (FF) of section 544
5739.01 of the Revised Code. 545

(47) Sales of value-added non-voice data service. This 546
division does not apply to any similar service that is not 547
otherwise a telecommunications service. 548

(48)(a) Sales of machinery, equipment, and software to a 549
qualified direct selling entity for use in a warehouse or 550
distribution center primarily for storing, transporting, or 551
otherwise handling inventory that is held for sale to independent 552
salespersons who operate as direct sellers and that is held 553
primarily for distribution outside this state; 554

(b) As used in division (B)(48)(a) of this section: 555

(i) "Direct seller" means a person selling consumer products 556
to individuals for personal or household use and not from a fixed 557
retail location, including selling such product at in-home product 558
demonstrations, parties, and other one-on-one selling. 559

(ii) "Qualified direct selling entity" means an entity 560
selling to direct sellers at the time the entity enters into a tax 561
credit agreement with the tax credit authority pursuant to section 562
122.17 of the Revised Code, provided that the agreement was 563
entered into on or after January 1, 2007. Neither contingencies 564
relevant to the granting of, nor later developments with respect 565
to, the tax credit shall impair the status of the qualified direct 566
selling entity under division (B)(48) of this section after 567
execution of the tax credit agreement by the tax credit authority. 568

(c) Division (B)(48) of this section is limited to machinery, 569
equipment, and software first stored, used, or consumed in this 570
state within the period commencing June 24, 2008, and ending on 571
the date that is five years after that date. 572

(49) Sales of materials, parts, equipment, or engines used in 573
the repair or maintenance of aircraft or avionics systems of such 574
aircraft, and sales of repair, remodeling, replacement, or 575
maintenance services in this state performed on aircraft or on an 576
aircraft's avionics, engine, or component materials or parts. As 577
used in division (B)(49) of this section, "aircraft" means 578
aircraft of more than six thousand pounds maximum certified 579
takeoff weight or used exclusively in general aviation. 580

(50) Sales of full flight simulators that are used for pilot 581
or flight-crew training, sales of repair or replacement parts or 582
components, and sales of repair or maintenance services for such 583
full flight simulators. "Full flight simulator" means a replica of 584
a specific type, or make, model, and series of aircraft cockpit. 585

It includes the assemblage of equipment and computer programs 586
necessary to represent aircraft operations in ground and flight 587
conditions, a visual system providing an out-of-the-cockpit view, 588
and a system that provides cues at least equivalent to those of a 589
three-degree-of-freedom motion system, and has the full range of 590
capabilities of the systems installed in the device as described 591
in appendices A and B of part 60 of chapter 1 of title 14 of the 592
Code of Federal Regulations. 593

(51) Any transfer or lease of tangible personal property 594
between the state and JobsOhio in accordance with section 4313.02 595
of the Revised Code. 596

(52)(a) Sales to a qualifying corporation. 597

(b) As used in division (B)(52) of this section: 598

(i) "Qualifying corporation" means a nonprofit corporation 599
organized in this state that leases from an eligible county land, 600
buildings, structures, fixtures, and improvements to the land that 601
are part of or used in a public recreational facility used by a 602
major league professional athletic team or a class A to class AAA 603
minor league affiliate of a major league professional athletic 604
team for a significant portion of the team's home schedule, 605
provided the following apply: 606

(I) The facility is leased from the eligible county pursuant 607
to a lease that requires substantially all of the revenue from the 608
operation of the business or activity conducted by the nonprofit 609
corporation at the facility in excess of operating costs, capital 610
expenditures, and reserves to be paid to the eligible county at 611
least once per calendar year. 612

(II) Upon dissolution and liquidation of the nonprofit 613
corporation, all of its net assets are distributable to the board 614
of commissioners of the eligible county from which the corporation 615
leases the facility. 616

(ii) "Eligible county" has the same meaning as in section 617
307.695 of the Revised Code. 618

(53) Sales to or by a cable service provider, video service 619
provider, or radio or television broadcast station regulated by 620
the federal government of cable service or programming, video 621
service or programming, audio service or programming, or 622
electronically transferred digital audiovisual or audio work. As 623
used in division (B)(53) of this section, "cable service" and 624
"cable service provider" have the same meanings as in section 625
1332.01 of the Revised Code, and "video service," "video service 626
provider," and "video programming" have the same meanings as in 627
section 1332.21 of the Revised Code. 628

(54)(a) Sales of the following occurring on the first Friday 629
of August and the following Saturday and Sunday of each year: 630

(i) An item of clothing, the price of which is one hundred 631
dollars or less; 632

(ii) An item of school supplies, the price of which is twenty 633
dollars or less; 634

(iii) A personal computer purchased for noncommercial home or 635
personal use, the price of which, less any manufacturer's rebate, 636
is seven hundred fifty dollars or less; 637

(iv) A personal computer accessory purchased for 638
noncommercial home or personal use, the price of which, less any 639
manufacturer's rebate, is seven hundred fifty dollars or less. 640

(b) As used in division (B)(54) of this section: 641

(i) "Clothing" does not include clothing accessories or 642
equipment, protective equipment, sports or recreational equipment, 643
clothing that is rented, or clothing that is used in a trade or 644
business. 645

(ii) "School supplies" means pens, pencils, binders, 646

notebooks, reference books, book bags, lunch boxes, calculators, 647
and similar items. "School supplies" does not include furniture, 648
items that are rented, or taxable personal property for use in a 649
trade or business. 650

(iii) "Personal computer" means an electronic device that 651
accepts information in digital or similar form and manipulates 652
such information for a result based on a sequence of instructions. 653
"Personal computer" includes any electronic book reader, laptop, 654
desktop, handheld, tablet, or tower computer but does not include 655
cellular telephones, video game consoles, digital media receivers, 656
or devices that are not primarily designed to process data. 657

(iv) "Accessory" means a keyboard, mouse, personal digital 658
assistant, monitor, peripheral device, modem, router, and 659
nonrecreational software, regardless of whether the accessory is 660
used in association with a personal computer base unit. 661
"Accessory" does not include furniture or any system, device, 662
software, or peripheral device that is designed or intended 663
primarily for recreational use. 664

(v) "Monitor" does not include a device that includes a 665
television tuner. 666

(C) For the purpose of the proper administration of this 667
chapter, and to prevent the evasion of the tax, it is presumed 668
that all sales made in this state are subject to the tax until the 669
contrary is established. 670

(D) The levy of this tax on retail sales of recreation and 671
sports club service shall not prevent a municipal corporation from 672
levying any tax on recreation and sports club dues or on any 673
income generated by recreation and sports club dues. 674

(E) The tax collected by the vendor from the consumer under 675
this chapter is not part of the price, but is a tax collection for 676
the benefit of the state, and of counties levying an additional 677

sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.

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

(2) The commissioner, in accordance with section 5703.14 of the Revised Code, shall adopt rules necessary to implement the three-day tax exemption periods provided by division (B)(51) of section 5739.02 of the Revised Code. Before each exemption period required under that division, the commissioner shall make available to vendors informational bulletins explaining the exemption.

(B) Upon application, the commissioner may authorize a vendor to pay on a predetermined basis the tax levied by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code upon sales of things produced or distributed or services provided by such vendor, and the commissioner may waive the collection of the tax from the consumer. The commissioner shall

not grant such authority unless the commissioner finds that the 709
granting of the authority would improve compliance and increase 710
the efficiency of the administration of the tax. The person to 711
whom such authority is granted shall post a notice, if required by 712
the commissioner, at the location where the product is offered for 713
sale, that the tax is included in the selling price. The 714
~~commissioner~~ commissioner may adopt rules to administer this 715
division. 716

(C) The commissioner may authorize a vendor to pay, on the 717
basis of a prearranged agreement under this division, the tax 718
levied by section 5739.02 or pursuant to section 5739.021, 719
5739.023, or 5739.026 of the Revised Code, and waive the 720
requirement that the vendor maintain the complete and accurate 721
record of individual taxable sales and tax collected thereon 722
required by section 5739.11 of the Revised Code, upon application 723
of the vendor, if the commissioner finds that the conditions of 724
the vendor-applicant's business are such that the maintenance of 725
such records of individual taxable sales and tax collected thereon 726
would impose an unreasonable burden upon the vendor. If the 727
commissioner determines that such unreasonable burden has been 728
imposed, the vendor and the commissioner shall agree to the terms 729
and conditions of a test check to be conducted. If the parties are 730
unable to agree to the terms and conditions of the test check, the 731
application shall be denied. The test check conducted shall 732
determine the proportion that taxable retail sales bear to all of 733
the vendor's retail sales and the ratio which the tax required to 734
be collected under sections 5739.02, 5739.021, and 5739.023 of the 735
Revised Code bears to the receipts from the vendor's taxable 736
retail sales. 737

The vendor shall collect the tax on the vendor's taxable 738
sales and the vendor's liability for collecting or remitting shall 739
be based upon the proportions and ratios established by the test 740

check, and not upon any other basis of determination, until such 741
time as a subsequent test check is made at the request of either 742
the vendor or the commissioner where either party believes that 743
the nature of the vendor's business has so changed as to make the 744
prior or existing test check no longer representative. The 745
commissioner may give notice to the vendor at any time that the 746
authorization is revoked or the vendor may notify the commissioner 747
that the vendor no longer elects to report under the 748
authorization. Such notice shall be delivered to the other party 749
personally or by registered mail. The revocation or cancellation 750
is not effective prior to the date of receipt of such notice. 751

Section 2. That existing sections 5739.02 and 5739.05 of the 752
Revised Code are hereby repealed. 753

Section 3. Section 5739.02 of the Revised Code is presented 754
in this act as a composite of the section as amended by both Am. 755
Sub. H.B. 51 and Am. Sub. H.B. 59 of the 130th General Assembly. 756
The General Assembly, applying the principle stated in division 757
(B) of section 1.52 of the Revised Code that amendments are to be 758
harmonized if reasonably capable of simultaneous operation, finds 759
that the composite is the resulting version of the section in 760
effect prior to the effective date of the section as presented in 761
this act. 762