

As Introduced

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H. B. No. 343

Representatives Young, Romanchuk

**Cosponsors: Representatives Antani, Becker, Brenner, Cupp, Hood, LaTourette,
Rezabek, Sprague, Thompson, Vitale**

A BILL

To amend sections 5739.01, 5739.02, and 5741.01 of 1
the Revised Code to exempt employment services 2
and employment placement services from sales and 3
use tax. 4

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

Section 1. That sections 5739.01, 5739.02, and 5741.01 of 5
the Revised Code be amended to read as follows: 6

Sec. 5739.01. As used in this chapter: 7

(A) "Person" includes individuals, receivers, assignees, 8
trustees in bankruptcy, estates, firms, partnerships, 9
associations, joint-stock companies, joint ventures, clubs, 10
societies, corporations, the state and its political 11
subdivisions, and combinations of individuals of any form. 12

(B) "Sale" and "selling" include all of the following 13
transactions for a consideration in any manner, whether 14
absolutely or conditionally, whether for a price or rental, in 15
money or by exchange, and by any means whatsoever: 16

(1) All transactions by which title or possession, or 17
both, of tangible personal property, is or is to be transferred, 18
or a license to use or consume tangible personal property is or 19
is to be granted; 20

(2) All transactions by which lodging by a hotel is or is 21
to be furnished to transient guests; 22

(3) All transactions by which: 23

(a) An item of tangible personal property is or is to be 24
repaired, except property, the purchase of which would not be 25
subject to the tax imposed by section 5739.02 of the Revised 26
Code; 27

(b) An item of tangible personal property is or is to be 28
installed, except property, the purchase of which would not be 29
subject to the tax imposed by section 5739.02 of the Revised 30
Code or property that is or is to be incorporated into and will 31
become a part of a production, transmission, transportation, or 32
distribution system for the delivery of a public utility 33
service; 34

(c) The service of washing, cleaning, waxing, polishing, 35
or painting a motor vehicle is or is to be furnished; 36

(d) Until August 1, 2003, industrial laundry cleaning 37
services are or are to be provided and, on and after August 1, 38
2003, laundry and dry cleaning services are or are to be 39
provided; 40

(e) Automatic data processing, computer services, or 41
electronic information services are or are to be provided for 42
use in business when the true object of the transaction is the 43
receipt by the consumer of automatic data processing, computer 44
services, or electronic information services rather than the 45

receipt of personal or professional services to which automatic 46
data processing, computer services, or electronic information 47
services are incidental or supplemental. Notwithstanding any 48
other provision of this chapter, such transactions that occur 49
between members of an affiliated group are not sales. An 50
"affiliated group" means two or more persons related in such a 51
way that one person owns or controls the business operation of 52
another member of the group. In the case of corporations with 53
stock, one corporation owns or controls another if it owns more 54
than fifty per cent of the other corporation's common stock with 55
voting rights. 56

(f) Telecommunications service, including prepaid calling 57
service, prepaid wireless calling service, or ancillary service, 58
is or is to be provided, but not including coin-operated 59
telephone service; 60

(g) Landscaping and lawn care service is or is to be 61
provided; 62

(h) Private investigation and security service is or is to 63
be provided; 64

(i) Information services or tangible personal property is 65
provided or ordered by means of a nine hundred telephone call; 66

(j) Building maintenance and janitorial service is or is 67
to be provided; 68

~~(k) Employment service is or is to be provided;~~ 69

~~(l) Employment placement service is or is to be provided;~~ 70

~~(m) Exterminating service is or is to be provided;~~ 71

~~(n)~~ (l) Physical fitness facility service is or is to be 72
provided; 73

~~(o)~~ (m) Recreation and sports club service is or is to be provided; 74
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~~(p)~~ (n) On and after August 1, 2003, satellite broadcasting service is or is to be provided; 76
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~~(q)~~ (o) On and after August 1, 2003, personal care service is or is to be provided to an individual. As used in this division, "personal care service" includes skin care, the application of cosmetics, manicuring, pedicuring, hair removal, tattooing, body piercing, tanning, massage, and other similar services. "Personal care service" does not include a service provided by or on the order of a licensed physician or licensed chiropractor, or the cutting, coloring, or styling of an individual's hair. 78
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~~(r)~~ (p) On and after August 1, 2003, the transportation of persons by motor vehicle or aircraft is or is to be provided, when the transportation is entirely within this state, except for transportation provided by an ambulance service, by a transit bus, as defined in section 5735.01 of the Revised Code, and transportation provided by a citizen of the United States holding a certificate of public convenience and necessity issued under 49 U.S.C. 41102; 87
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~~(s)~~ (q) On and after August 1, 2003, motor vehicle towing service is or is to be provided. As used in this division, "motor vehicle towing service" means the towing or conveyance of a wrecked, disabled, or illegally parked motor vehicle. 95
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~~(t)~~ (r) On and after August 1, 2003, snow removal service is or is to be provided. As used in this division, "snow removal service" means the removal of snow by any mechanized means, but does not include the providing of such service by a person that 99
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has less than five thousand dollars in sales of such service 103
during the calendar year. 104

~~(u)~~ (s) Electronic publishing service is or is to be 105
provided to a consumer for use in business, except that such 106
transactions occurring between members of an affiliated group, 107
as defined in division (B) (3) (e) of this section, are not sales. 108

(4) All transactions by which printed, imprinted, 109
overprinted, lithographic, multilithic, blueprinted, 110
photostatic, or other productions or reproductions of written or 111
graphic matter are or are to be furnished or transferred; 112

(5) The production or fabrication of tangible personal 113
property for a consideration for consumers who furnish either 114
directly or indirectly the materials used in the production of 115
fabrication work; and include the furnishing, preparing, or 116
serving for a consideration of any tangible personal property 117
consumed on the premises of the person furnishing, preparing, or 118
serving such tangible personal property. Except as provided in 119
section 5739.03 of the Revised Code, a construction contract 120
pursuant to which tangible personal property is or is to be 121
incorporated into a structure or improvement on and becoming a 122
part of real property is not a sale of such tangible personal 123
property. The construction contractor is the consumer of such 124
tangible personal property, provided that the sale and 125
installation of carpeting, the sale and installation of 126
agricultural land tile, the sale and erection or installation of 127
portable grain bins, or the provision of landscaping and lawn 128
care service and the transfer of property as part of such 129
service is never a construction contract. 130

As used in division (B) (5) of this section: 131

(a) "Agricultural land tile" means fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated or to be incorporated into a subsurface drainage system appurtenant to land used or to be used primarily in production by farming, agriculture, horticulture, or floriculture. The term does not include such materials when they are or are to be incorporated into a drainage system appurtenant to a building or structure even if the building or structure is used or to be used in such production.

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, or an ownership interest in a pass-through entity, as defined in section 5733.04 of the Revised Code, is transferred, if the corporation or pass-through entity is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders or owners;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale;

(9) On and after August 1, 2003, all transactions by which 161
tangible personal property is or is to be stored, except such 162
property that the consumer of the storage holds for sale in the 163
regular course of business; 164

(10) All transactions in which "guaranteed auto 165
protection" is provided whereby a person promises to pay to the 166
consumer the difference between the amount the consumer receives 167
from motor vehicle insurance and the amount the consumer owes to 168
a person holding title to or a lien on the consumer's motor 169
vehicle in the event the consumer's motor vehicle suffers a 170
total loss under the terms of the motor vehicle insurance policy 171
or is stolen and not recovered, if the protection and its price 172
are included in the purchase or lease agreement; 173

(11) (a) Except as provided in division (B) (11) (b) of this 174
section, on and after October 1, 2009, all transactions by which 175
health care services are paid for, reimbursed, provided, 176
delivered, arranged for, or otherwise made available by a 177
medicaid health insuring corporation pursuant to the 178
corporation's contract with the state. 179

(b) If the centers for medicare and medicaid services of 180
the United States department of health and human services 181
determines that the taxation of transactions described in 182
division (B) (11) (a) of this section constitutes an impermissible 183
health care-related tax under the "Social Security Act," section 184
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 185
the medicaid director shall notify the tax commissioner of that 186
determination. Beginning with the first day of the month 187
following that notification, the transactions described in 188
division (B) (11) (a) of this section are not sales for the 189
purposes of this chapter or Chapter 5741. of the Revised Code. 190

The tax commissioner shall order that the collection of taxes 191
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 192
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 193
for transactions occurring on or after that date. 194

(12) All transactions by which a specified digital product 195
is provided for permanent use or less than permanent use, 196
regardless of whether continued payment is required. 197

Except as provided in this section, "sale" and "selling" 198
do not include transfers of interest in leased property where 199
the original lessee and the terms of the original lease 200
agreement remain unchanged, or professional, insurance, or 201
personal service transactions that involve the transfer of 202
tangible personal property as an inconsequential element, for 203
which no separate charges are made. 204

(C) "Vendor" means the person providing the service or by 205
whom the transfer effected or license given by a sale is or is 206
to be made or given and, for sales described in division (B)(3) 207
(i) of this section, the telecommunications service vendor that 208
provides the nine hundred telephone service; if two or more 209
persons are engaged in business at the same place of business 210
under a single trade name in which all collections on account of 211
sales by each are made, such persons shall constitute a single 212
vendor. 213

Physicians, dentists, hospitals, and veterinarians who are 214
engaged in selling tangible personal property as received from 215
others, such as eyeglasses, mouthwashes, dentifrices, or similar 216
articles, are vendors. Veterinarians who are engaged in 217
transferring to others for a consideration drugs, the dispensing 218
of which does not require an order of a licensed veterinarian or 219
physician under federal law, are vendors. 220

(D) (1) "Consumer" means the person for whom the service is provided, to whom the transfer effected or license given by a sale is or is to be made or given, to whom the service described in division (B) (3) (f) or (i) of this section is charged, or to whom the admission is granted.

(2) Physicians, dentists, hospitals, and blood banks operated by nonprofit institutions and persons licensed to practice veterinary medicine, surgery, and dentistry are consumers of all tangible personal property and services purchased by them in connection with the practice of medicine, dentistry, the rendition of hospital or blood bank service, or the practice of veterinary medicine, surgery, and dentistry. In addition to being consumers of drugs administered by them or by their assistants according to their direction, veterinarians also are consumers of drugs that under federal law may be dispensed only by or upon the order of a licensed veterinarian or physician, when transferred by them to others for a consideration to provide treatment to animals as directed by the veterinarian.

(3) A person who performs a facility management, or similar service contract for a contractee is a consumer of all tangible personal property and services purchased for use in connection with the performance of such contract, regardless of whether title to any such property vests in the contractee. The purchase of such property and services is not subject to the exception for resale under division (E) (1) of this section.

(4) (a) In the case of a person who purchases printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of that

printed matter, and the purchase of that printed matter for that 251
purpose is a sale. 252

(b) In the case of a person who produces, rather than 253
purchases, printed matter for the purpose of distributing it or 254
having it distributed to the public or to a designated segment 255
of the public, free of charge, that person is the consumer of 256
all tangible personal property and services purchased for use or 257
consumption in the production of that printed matter. That 258
person is not entitled to claim exemption under division (B) (42) 259
(f) of section 5739.02 of the Revised Code for any material 260
incorporated into the printed matter or any equipment, supplies, 261
or services primarily used to produce the printed matter. 262

(c) The distribution of printed matter to the public or to 263
a designated segment of the public, free of charge, is not a 264
sale to the members of the public to whom the printed matter is 265
distributed or to any persons who purchase space in the printed 266
matter for advertising or other purposes. 267

(5) A person who makes sales of any of the services listed 268
in division (B) (3) of this section is the consumer of any 269
tangible personal property used in performing the service. The 270
purchase of that property is not subject to the resale exception 271
under division (E) (1) of this section. 272

(6) A person who engages in highway transportation for 273
hire is the consumer of all packaging materials purchased by 274
that person and used in performing the service, except for 275
packaging materials sold by such person in a transaction 276
separate from the service. 277

(7) In the case of a transaction for health care services 278
under division (B) (11) of this section, a medicaid health 279

insuring corporation is the consumer of such services. The 280
purchase of such services by a medicaid health insuring 281
corporation is not subject to the exception for resale under 282
division (E) (1) of this section or to the exemptions provided 283
under divisions (B) (12), (18), (19), and (22) of section 5739.02 284
of the Revised Code. 285

(E) "Retail sale" and "sales at retail" include all sales, 286
except those in which the purpose of the consumer is to resell 287
the thing transferred or benefit of the service provided, by a 288
person engaging in business, in the form in which the same is, 289
or is to be, received by the person. 290

(F) "Business" includes any activity engaged in by any 291
person with the object of gain, benefit, or advantage, either 292
direct or indirect. "Business" does not include the activity of 293
a person in managing and investing the person's own funds. 294

(G) "Engaging in business" means commencing, conducting, 295
or continuing in business, and liquidating a business when the 296
liquidator thereof holds itself out to the public as conducting 297
such business. Making a casual sale is not engaging in business. 298

(H) (1) (a) "Price," except as provided in divisions (H) (2), 299
(3), and (4) of this section, means the total amount of 300
consideration, including cash, credit, property, and services, 301
for which tangible personal property or services are sold, 302
leased, or rented, valued in money, whether received in money or 303
otherwise, without any deduction for any of the following: 304

(i) The vendor's cost of the property sold; 305

(ii) The cost of materials used, labor or service costs, 306
interest, losses, all costs of transportation to the vendor, all 307
taxes imposed on the vendor, including the tax imposed under 308

Chapter 5751. of the Revised Code, and any other expense of the	309
vendor;	310
(iii) Charges by the vendor for any services necessary to	311
complete the sale;	312
(iv) On and after August 1, 2003, delivery charges. As	313
used in this division, "delivery charges" means charges by the	314
vendor for preparation and delivery to a location designated by	315
the consumer of tangible personal property or a service,	316
including transportation, shipping, postage, handling, crating,	317
and packing.	318
(v) Installation charges;	319
(vi) Credit for any trade-in.	320
(b) "Price" includes consideration received by the vendor	321
from a third party, if the vendor actually receives the	322
consideration from a party other than the consumer, and the	323
consideration is directly related to a price reduction or	324
discount on the sale; the vendor has an obligation to pass the	325
price reduction or discount through to the consumer; the amount	326
of the consideration attributable to the sale is fixed and	327
determinable by the vendor at the time of the sale of the item	328
to the consumer; and one of the following criteria is met:	329
(i) The consumer presents a coupon, certificate, or other	330
document to the vendor to claim a price reduction or discount	331
where the coupon, certificate, or document is authorized,	332
distributed, or granted by a third party with the understanding	333
that the third party will reimburse any vendor to whom the	334
coupon, certificate, or document is presented;	335
(ii) The consumer identifies the consumer's self to the	336
seller as a member of a group or organization entitled to a	337

price reduction or discount. A preferred customer card that is 338
available to any patron does not constitute membership in such a 339
group or organization. 340

(iii) The price reduction or discount is identified as a 341
third party price reduction or discount on the invoice received 342
by the consumer, or on a coupon, certificate, or other document 343
presented by the consumer. 344

(c) "Price" does not include any of the following: 345

(i) Discounts, including cash, term, or coupons that are 346
not reimbursed by a third party that are allowed by a vendor and 347
taken by a consumer on a sale; 348

(ii) Interest, financing, and carrying charges from credit 349
extended on the sale of tangible personal property or services, 350
if the amount is separately stated on the invoice, bill of sale, 351
or similar document given to the purchaser; 352

(iii) Any taxes legally imposed directly on the consumer 353
that are separately stated on the invoice, bill of sale, or 354
similar document given to the consumer. For the purpose of this 355
division, the tax imposed under Chapter 5751. of the Revised 356
Code is not a tax directly on the consumer, even if the tax or a 357
portion thereof is separately stated. 358

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 359
this section, any discount allowed by an automobile manufacturer 360
to its employee, or to the employee of a supplier, on the 361
purchase of a new motor vehicle from a new motor vehicle dealer 362
in this state. 363

(v) The dollar value of a gift card that is not sold by a 364
vendor or purchased by a consumer and that is redeemed by the 365
consumer in purchasing tangible personal property or services if 366

the vendor is not reimbursed and does not receive compensation 367
from a third party to cover all or part of the gift card value. 368
For the purposes of this division, a gift card is not sold by a 369
vendor or purchased by a consumer if it is distributed pursuant 370
to an awards, loyalty, or promotional program. Past and present 371
purchases of tangible personal property or services by the 372
consumer shall not be treated as consideration exchanged for a 373
gift card. 374

(2) In the case of a sale of any new motor vehicle by a 375
new motor vehicle dealer, as defined in section 4517.01 of the 376
Revised Code, in which another motor vehicle is accepted by the 377
dealer as part of the consideration received, "price" has the 378
same meaning as in division (H)(1) of this section, reduced by 379
the credit afforded the consumer by the dealer for the motor 380
vehicle received in trade. 381

(3) In the case of a sale of any watercraft or outboard 382
motor by a watercraft dealer licensed in accordance with section 383
1547.543 of the Revised Code, in which another watercraft, 384
watercraft and trailer, or outboard motor is accepted by the 385
dealer as part of the consideration received, "price" has the 386
same meaning as in division (H)(1) of this section, reduced by 387
the credit afforded the consumer by the dealer for the 388
watercraft, watercraft and trailer, or outboard motor received 389
in trade. As used in this division, "watercraft" includes an 390
outdrive unit attached to the watercraft. 391

(4) In the case of transactions for health care services 392
under division (B)(11) of this section, "price" means the amount 393
of managed care premiums received each month by a medicaid 394
health insuring corporation. 395

(I) "Receipts" means the total amount of the prices of the 396

sales of vendors, provided that the dollar value of gift cards 397
distributed pursuant to an awards, loyalty, or promotional 398
program, and cash discounts allowed and taken on sales at the 399
time they are consummated are not included, minus any amount 400
deducted as a bad debt pursuant to section 5739.121 of the 401
Revised Code. "Receipts" does not include the sale price of 402
property returned or services rejected by consumers when the 403
full sale price and tax are refunded either in cash or by 404
credit. 405

(J) "Place of business" means any location at which a 406
person engages in business. 407

(K) "Premises" includes any real property or portion 408
thereof upon which any person engages in selling tangible 409
personal property at retail or making retail sales and also 410
includes any real property or portion thereof designated for, or 411
devoted to, use in conjunction with the business engaged in by 412
such person. 413

(L) "Casual sale" means a sale of an item of tangible 414
personal property that was obtained by the person making the 415
sale, through purchase or otherwise, for the person's own use 416
and was previously subject to any state's taxing jurisdiction on 417
its sale or use, and includes such items acquired for the 418
seller's use that are sold by an auctioneer employed directly by 419
the person for such purpose, provided the location of such sales 420
is not the auctioneer's permanent place of business. As used in 421
this division, "permanent place of business" includes any 422
location where such auctioneer has conducted more than two 423
auctions during the year. 424

(M) "Hotel" means every establishment kept, used, 425
maintained, advertised, or held out to the public to be a place 426

where sleeping accommodations are offered to guests, in which 427
five or more rooms are used for the accommodation of such 428
guests, whether the rooms are in one or several structures, 429
except as otherwise provided in division (G) of section 5739.09 430
of the Revised Code. 431

(N) "Transient guests" means persons occupying a room or 432
rooms for sleeping accommodations for less than thirty 433
consecutive days. 434

(O) "Making retail sales" means the effecting of 435
transactions wherein one party is obligated to pay the price and 436
the other party is obligated to provide a service or to transfer 437
title to or possession of the item sold. "Making retail sales" 438
does not include the preliminary acts of promoting or soliciting 439
the retail sales, other than the distribution of printed matter 440
which displays or describes and prices the item offered for 441
sale, nor does it include delivery of a predetermined quantity 442
of tangible personal property or transportation of property or 443
personnel to or from a place where a service is performed. 444

(P) "Used directly in the rendition of a public utility 445
service" means that property that is to be incorporated into and 446
will become a part of the consumer's production, transmission, 447
transportation, or distribution system and that retains its 448
classification as tangible personal property after such 449
incorporation; fuel or power used in the production, 450
transmission, transportation, or distribution system; and 451
tangible personal property used in the repair and maintenance of 452
the production, transmission, transportation, or distribution 453
system, including only such motor vehicles as are specially 454
designed and equipped for such use. Tangible personal property 455
and services used primarily in providing highway transportation 456

for hire are not used directly in the rendition of a public 457
utility service. In this definition, "public utility" includes a 458
citizen of the United States holding, and required to hold, a 459
certificate of public convenience and necessity issued under 49 460
U.S.C. 41102. 461

(Q) "Refining" means removing or separating a desirable 462
product from raw or contaminated materials by distillation or 463
physical, mechanical, or chemical processes. 464

(R) "Assembly" and "assembling" mean attaching or fitting 465
together parts to form a product, but do not include packaging a 466
product. 467

(S) "Manufacturing operation" means a process in which 468
materials are changed, converted, or transformed into a 469
different state or form from which they previously existed and 470
includes refining materials, assembling parts, and preparing raw 471
materials and parts by mixing, measuring, blending, or otherwise 472
committing such materials or parts to the manufacturing process. 473
"Manufacturing operation" does not include packaging. 474

(T) "Fiscal officer" means, with respect to a regional 475
transit authority, the secretary-treasurer thereof, and with 476
respect to a county that is a transit authority, the fiscal 477
officer of the county transit board if one is appointed pursuant 478
to section 306.03 of the Revised Code or the county auditor if 479
the board of county commissioners operates the county transit 480
system. 481

(U) "Transit authority" means a regional transit authority 482
created pursuant to section 306.31 of the Revised Code or a 483
county in which a county transit system is created pursuant to 484
section 306.01 of the Revised Code. For the purposes of this 485

chapter, a transit authority must extend to at least the entire 486
area of a single county. A transit authority that includes 487
territory in more than one county must include all the area of 488
the most populous county that is a part of such transit 489
authority. County population shall be measured by the most 490
recent census taken by the United States census bureau. 491

(V) "Legislative authority" means, with respect to a 492
regional transit authority, the board of trustees thereof, and 493
with respect to a county that is a transit authority, the board 494
of county commissioners. 495

(W) "Territory of the transit authority" means all of the 496
area included within the territorial boundaries of a transit 497
authority as they from time to time exist. Such territorial 498
boundaries must at all times include all the area of a single 499
county or all the area of the most populous county that is a 500
part of such transit authority. County population shall be 501
measured by the most recent census taken by the United States 502
census bureau. 503

(X) "Providing a service" means providing or furnishing 504
anything described in division (B) (3) of this section for 505
consideration. 506

(Y) (1) (a) "Automatic data processing" means processing of 507
others' data, including keypunching or similar data entry 508
services together with verification thereof, or providing access 509
to computer equipment for the purpose of processing data. 510

(b) "Computer services" means providing services 511
consisting of specifying computer hardware configurations and 512
evaluating technical processing characteristics, computer 513
programming, and training of computer programmers and operators, 514

provided in conjunction with and to support the sale, lease, or 515
operation of taxable computer equipment or systems. 516

(c) "Electronic information services" means providing 517
access to computer equipment by means of telecommunications 518
equipment for the purpose of either of the following: 519

(i) Examining or acquiring data stored in or accessible to 520
the computer equipment; 521

(ii) Placing data into the computer equipment to be 522
retrieved by designated recipients with access to the computer 523
equipment. 524

For transactions occurring on or after the effective date 525
of the amendment of this section by H.B. 157 of the 127th 526
general assembly, December 21, 2007, "electronic information 527
services" does not include electronic publishing as defined in 528
division (LLL) of this section. 529

(d) "Automatic data processing, computer services, or 530
electronic information services" shall not include personal or 531
professional services. 532

(2) As used in divisions (B)(3)(e) and (Y)(1) of this 533
section, "personal and professional services" means all services 534
other than automatic data processing, computer services, or 535
electronic information services, including but not limited to: 536

(a) Accounting and legal services such as advice on tax 537
matters, asset management, budgetary matters, quality control, 538
information security, and auditing and any other situation where 539
the service provider receives data or information and studies, 540
alters, analyzes, interprets, or adjusts such material; 541

(b) Analyzing business policies and procedures; 542

(c) Identifying management information needs;	543
(d) Feasibility studies, including economic and technical analysis of existing or potential computer hardware or software needs and alternatives;	544 545 546
(e) Designing policies, procedures, and custom software for collecting business information, and determining how data should be summarized, sequenced, formatted, processed, controlled, and reported so that it will be meaningful to management;	547 548 549 550 551
(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	552 553 554
(g) Testing of business procedures;	555
(h) Training personnel in business procedure applications;	556
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	557 558 559 560 561 562 563
(j) Providing debt collection services by any oral, written, graphic, or electronic means.	564 565
The services listed in divisions (Y) (2) (a) to (j) of this section are not automatic data processing or computer services.	566 567
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	568 569 570

(1) The holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare;

(2) A person who engages in the transportation of personal property belonging to others for consideration over or on highways, roadways, streets, or any similar public thoroughfare but who could not have engaged in such transportation on December 11, 1985, unless the person was the holder of a permit or certificate of the types described in division (Z) (1) of this section;

(3) A person who leases a motor vehicle to and operates it for a person described by division (Z) (1) or (2) of this section.

(AA) (1) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether the service is referred to as voice-over internet protocol service or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include any of the following:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a consumer where

the consumer's primary purpose for the underlying transaction is 601
the processed data or information; 602

(b) Installation or maintenance of wiring or equipment on 603
a customer's premises; 604

(c) Tangible personal property; 605

(d) Advertising, including directory advertising; 606

(e) Billing and collection services provided to third 607
parties; 608

(f) Internet access service; 609

(g) Radio and television audio and video programming 610
services, regardless of the medium, including the furnishing of 611
transmission, conveyance, and routing of such services by the 612
programming service provider. Radio and television audio and 613
video programming services include, but are not limited to, 614
cable service, as defined in 47 U.S.C. 522(6), and audio and 615
video programming services delivered by commercial mobile radio 616
service providers, as defined in 47 C.F.R. 20.3; 617

(h) Ancillary service; 618

(i) Digital products delivered electronically, including 619
software, music, video, reading materials, or ring tones. 620

(2) "Ancillary service" means a service that is associated 621
with or incidental to the provision of telecommunications 622
service, including conference bridging service, detailed 623
telecommunications billing service, directory assistance, 624
vertical service, and voice mail service. As used in this 625
division: 626

(a) "Conference bridging service" means an ancillary 627

service that links two or more participants of an audio or video conference call, including providing a telephone number. "Conference bridging service" does not include telecommunications services used to reach the conference bridge.

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(c) "Directory assistance" means an ancillary service of providing telephone number or address information.

(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service.

(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900 service" and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer.

(4) "Prepaid calling service" means the right to access 657
exclusively telecommunications services, which must be paid for 658
in advance and which enables the origination of calls using an 659
access number or authorization code, whether manually or 660
electronically dialed, and that is sold in predetermined units 661
or dollars of which the number declines with use in a known 662
amount. 663

(5) "Prepaid wireless calling service" means a 664
telecommunications service that provides the right to utilize 665
mobile telecommunications service as well as other non- 666
telecommunications services, including the download of digital 667
products delivered electronically, and content and ancillary 668
services, that must be paid for in advance and that is sold in 669
predetermined units or dollars of which the number declines with 670
use in a known amount. 671

(6) "Value-added non-voice data service" means a 672
telecommunications service in which computer processing 673
applications are used to act on the form, content, code, or 674
protocol of the information or data primarily for a purpose 675
other than transmission, conveyance, or routing. 676

(7) "Coin-operated telephone service" means a 677
telecommunications service paid for by inserting money into a 678
telephone accepting direct deposits of money to operate. 679

(8) "Customer" has the same meaning as in section 5739.034 680
of the Revised Code. 681

(BB) "Laundry and dry cleaning services" means removing 682
soil or dirt from towels, linens, articles of clothing, or other 683
fabric items that belong to others and supplying towels, linens, 684
articles of clothing, or other fabric items. "Laundry and dry 685

cleaning services" does not include the provision of self- 686
service facilities for use by consumers to remove soil or dirt 687
from towels, linens, articles of clothing, or other fabric 688
items. 689

(CC) "Magazines distributed as controlled circulation 690
publications" means magazines containing at least twenty-four 691
pages, at least twenty-five per cent editorial content, issued 692
at regular intervals four or more times a year, and circulated 693
without charge to the recipient, provided that such magazines 694
are not owned or controlled by individuals or business concerns 695
which conduct such publications as an auxiliary to, and 696
essentially for the advancement of the main business or calling 697
of, those who own or control them. 698

(DD) "Landscaping and lawn care service" means the 699
services of planting, seeding, sodding, removing, cutting, 700
trimming, pruning, mulching, aerating, applying chemicals, 701
watering, fertilizing, and providing similar services to 702
establish, promote, or control the growth of trees, shrubs, 703
flowers, grass, ground cover, and other flora, or otherwise 704
maintaining a lawn or landscape grown or maintained by the owner 705
for ornamentation or other nonagricultural purpose. However, 706
"landscaping and lawn care service" does not include the 707
providing of such services by a person who has less than five 708
thousand dollars in sales of such services during the calendar 709
year. 710

(EE) "Private investigation and security service" means 711
the performance of any activity for which the provider of such 712
service is required to be licensed pursuant to Chapter 4749. of 713
the Revised Code, or would be required to be so licensed in 714
performing such services in this state, and also includes the 715

services of conducting polygraph examinations and of monitoring 716
or overseeing the activities on or in, or the condition of, the 717
consumer's home, business, or other facility by means of 718
electronic or similar monitoring devices. "Private investigation 719
and security service" does not include special duty services 720
provided by off-duty police officers, deputy sheriffs, and other 721
peace officers regularly employed by the state or a political 722
subdivision. 723

(FF) "Information services" means providing conversation, 724
giving consultation or advice, playing or making a voice or 725
other recording, making or keeping a record of the number of 726
callers, and any other service provided to a consumer by means 727
of a nine hundred telephone call, except when the nine hundred 728
telephone call is the means by which the consumer makes a 729
contribution to a recognized charity. 730

(GG) "Research and development" means designing, creating, 731
or formulating new or enhanced products, equipment, or 732
manufacturing processes, and also means conducting scientific or 733
technological inquiry and experimentation in the physical 734
sciences with the goal of increasing scientific knowledge which 735
may reveal the bases for new or enhanced products, equipment, or 736
manufacturing processes. 737

(HH) "Qualified research and development equipment" means 738
capitalized tangible personal property, and leased personal 739
property that would be capitalized if purchased, used by a 740
person primarily to perform research and development. Tangible 741
personal property primarily used in testing, as defined in 742
division (A)(4) of section 5739.011 of the Revised Code, or used 743
for recording or storing test results, is not qualified research 744
and development equipment unless such property is primarily used 745

by the consumer in testing the product, equipment, or 746
manufacturing process being created, designed, or formulated by 747
the consumer in the research and development activity or in 748
recording or storing such test results. 749

(II) "Building maintenance and janitorial service" means 750
cleaning the interior or exterior of a building and any tangible 751
personal property located therein or thereon, including any 752
services incidental to such cleaning for which no separate 753
charge is made. However, "building maintenance and janitorial 754
service" does not include the providing of such service by a 755
person who has less than five thousand dollars in sales of such 756
service during the calendar year. 757

~~(JJ) "Employment service" means providing or supplying 758
personnel, on a temporary or long term basis, to perform work or 759
labor under the supervision or control of another, when the 760
personnel so provided or supplied receive their wages, salary, 761
or other compensation from the provider or supplier of the 762
employment service or from a third party that provided or 763
supplied the personnel to the provider or supplier. "Employment 764
service" does not include: 765~~

~~(1) Acting as a contractor or subcontractor, where the 766
personnel performing the work are not under the direct control 767
of the purchaser. 768~~

~~(2) Medical and health care services. 769~~

~~(3) Supplying personnel to a purchaser pursuant to a 770
contract of at least one year between the service provider and 771
the purchaser that specifies that each employee covered under 772
the contract is assigned to the purchaser on a permanent basis. 773~~

~~(4) Transactions between members of an affiliated group, 774~~

~~as defined in division (B) (3) (c) of this section.~~ 775

~~(5) Transactions where the personnel so provided or
supplied by a provider or supplier to a purchaser of an
employment service are then provided or supplied by that
purchaser to a third party as an employment service, except
"employment service" does include the transaction between that
purchaser and the third party.~~ 776
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~~(KK) "Employment placement service" means locating or
finding employment for a person or finding or locating an
employee to fill an available position.~~ 782
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~~(LL) "Exterminating service" means eradicating or
attempting to eradicate vermin infestations from a building or
structure, or the area surrounding a building or structure, and
includes activities to inspect, detect, or prevent vermin
infestation of a building or structure.~~ 785
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~~(MM)~~ (KK) "Physical fitness facility service" means all 790
transactions by which a membership is granted, maintained, or 791
renewed, including initiation fees, membership dues, renewal 792
fees, monthly minimum fees, and other similar fees and dues, by 793
a physical fitness facility such as an athletic club, health 794
spa, or gymnasium, which entitles the member to use the facility 795
for physical exercise. 796

~~(NN)~~ (LL) "Recreation and sports club service" means all 797
transactions by which a membership is granted, maintained, or 798
renewed, including initiation fees, membership dues, renewal 799
fees, monthly minimum fees, and other similar fees and dues, by 800
a recreation and sports club, which entitles the member to use 801
the facilities of the organization. "Recreation and sports club" 802
means an organization that has ownership of, or controls or 803

leases on a continuing, long-term basis, the facilities used by 804
its members and includes an aviation club, gun or shooting club, 805
yacht club, card club, swimming club, tennis club, golf club, 806
country club, riding club, amateur sports club, or similar 807
organization. 808

~~(OO)~~(MM) "Livestock" means farm animals commonly raised 809
for food, food production, or other agricultural purposes, 810
including, but not limited to, cattle, sheep, goats, swine, 811
poultry, and captive deer. "Livestock" does not include 812
invertebrates, amphibians, reptiles, domestic pets, animals for 813
use in laboratories or for exhibition, or other animals not 814
commonly raised for food or food production. 815

~~(PP)~~(NN) "Livestock structure" means a building or 816
structure used exclusively for the housing, raising, feeding, or 817
sheltering of livestock, and includes feed storage or handling 818
structures and structures for livestock waste handling. 819

~~(OO)~~(OO) "Horticulture" means the growing, cultivation, 820
and production of flowers, fruits, herbs, vegetables, sod, 821
mushrooms, and nursery stock. As used in this division, "nursery 822
stock" has the same meaning as in section 927.51 of the Revised 823
Code. 824

~~(RR)~~(PP) "Horticulture structure" means a building or 825
structure used exclusively for the commercial growing, raising, 826
or overwintering of horticultural products, and includes the 827
area used for stocking, storing, and packing horticultural 828
products when done in conjunction with the production of those 829
products. 830

~~(SS)~~(OO) "Newspaper" means an unbound publication bearing 831
a title or name that is regularly published, at least as 832

frequently as biweekly, and distributed from a fixed place of 833
business to the public in a specific geographic area, and that 834
contains a substantial amount of news matter of international, 835
national, or local events of interest to the general public. 836

~~(TT)~~(RR) "Professional racing team" means a person that 837
employs at least twenty full-time employees for the purpose of 838
conducting a motor vehicle racing business for profit. The 839
person must conduct the business with the purpose of racing one 840
or more motor racing vehicles in at least ten competitive 841
professional racing events each year that comprise all or part 842
of a motor racing series sanctioned by one or more motor racing 843
sanctioning organizations. A "motor racing vehicle" means a 844
vehicle for which the chassis, engine, and parts are designed 845
exclusively for motor racing, and does not include a stock or 846
production model vehicle that may be modified for use in racing. 847
For the purposes of this division: 848

(1) A "competitive professional racing event" is a motor 849
vehicle racing event sanctioned by one or more motor racing 850
sanctioning organizations, at which aggregate cash prizes in 851
excess of eight hundred thousand dollars are awarded to the 852
competitors. 853

(2) "Full-time employee" means an individual who is 854
employed for consideration for thirty-five or more hours a week, 855
or who renders any other standard of service generally accepted 856
by custom or specified by contract as full-time employment. 857

~~(UU)~~(SS) (1) "Lease" or "rental" means any transfer of the 858
possession or control of tangible personal property for a fixed 859
or indefinite term, for consideration. "Lease" or "rental" 860
includes future options to purchase or extend, and agreements 861
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 862

trailers where the amount of consideration may be increased or 863
decreased by reference to the amount realized upon the sale or 864
disposition of the property. "Lease" or "rental" does not 865
include: 866

(a) A transfer of possession or control of tangible 867
personal property under a security agreement or a deferred 868
payment plan that requires the transfer of title upon completion 869
of the required payments; 870

(b) A transfer of possession or control of tangible 871
personal property under an agreement that requires the transfer 872
of title upon completion of required payments and payment of an 873
option price that does not exceed the greater of one hundred 874
dollars or one per cent of the total required payments; 875

(c) Providing tangible personal property along with an 876
operator for a fixed or indefinite period of time, if the 877
operator is necessary for the property to perform as designed. 878
For purposes of this division, the operator must do more than 879
maintain, inspect, or set up the tangible personal property. 880

(2) "Lease" and "rental," as defined in division (UU) of 881
this section, shall not apply to leases or rentals that exist 882
before June 26, 2003. 883

(3) "Lease" and "rental" have the same meaning as in 884
division ~~(UU)~~ (SS) (1) of this section regardless of whether a 885
transaction is characterized as a lease or rental under 886
generally accepted accounting principles, the Internal Revenue 887
Code, Title XIII of the Revised Code, or other federal, state, 888
or local laws. 889

~~(VV)~~ (TT) "Mobile telecommunications service" has the same 890
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 891

L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 892
amended, and, on and after August 1, 2003, includes related fees 893
and ancillary services, including universal service fees, 894
detailed billing service, directory assistance, service 895
initiation, voice mail service, and vertical services, such as 896
caller ID and three-way calling. 897

~~(WW)~~ (UU) "Certified service provider" has the same 898
meaning as in section 5740.01 of the Revised Code. 899

~~(XX)~~ (VV) "Satellite broadcasting service" means the 900
distribution or broadcasting of programming or services by 901
satellite directly to the subscriber's receiving equipment 902
without the use of ground receiving or distribution equipment, 903
except the subscriber's receiving equipment or equipment used in 904
the uplink process to the satellite, and includes all service 905
and rental charges, premium channels or other special services, 906
installation and repair service charges, and any other charges 907
having any connection with the provision of the satellite 908
broadcasting service. 909

~~(YY)~~ (WW) "Tangible personal property" means personal 910
property that can be seen, weighed, measured, felt, or touched, 911
or that is in any other manner perceptible to the senses. For 912
purposes of this chapter and Chapter 5741. of the Revised Code, 913
"tangible personal property" includes motor vehicles, 914
electricity, water, gas, steam, and prewritten computer 915
software. 916

~~(ZZ)~~ (XX) "Direct mail" means printed material delivered 917
or distributed by United States mail or other delivery service 918
to a mass audience or to addressees on a mailing list provided 919
by the consumer or at the direction of the consumer when the 920
cost of the items are not billed directly to the recipients. 921

"Direct mail" includes tangible personal property supplied 922
directly or indirectly by the consumer to the direct mail vendor 923
for inclusion in the package containing the printed material. 924
"Direct mail" does not include multiple items of printed 925
material delivered to a single address. 926

~~(AAA)~~ (YY) "Computer" means an electronic device that 927
accepts information in digital or similar form and manipulates 928
it for a result based on a sequence of instructions. 929

~~(BBB)~~ (ZZ) "Computer software" means a set of coded 930
instructions designed to cause a computer or automatic data 931
processing equipment to perform a task. 932

~~(CCC)~~ (AAA) "Delivered electronically" means delivery of 933
computer software from the seller to the purchaser by means 934
other than tangible storage media. 935

~~(DDD)~~ (BBB) "Prewritten computer software" means computer 936
software, including prewritten upgrades, that is not designed 937
and developed by the author or other creator to the 938
specifications of a specific purchaser. The combining of two or 939
more prewritten computer software programs or prewritten 940
portions thereof does not cause the combination to be other than 941
prewritten computer software. "Prewritten computer software" 942
includes software designed and developed by the author or other 943
creator to the specifications of a specific purchaser when it is 944
sold to a person other than the purchaser. If a person modifies 945
or enhances computer software of which the person is not the 946
author or creator, the person shall be deemed to be the author 947
or creator only of such person's modifications or enhancements. 948
Prewritten computer software or a prewritten portion thereof 949
that is modified or enhanced to any degree, where such 950
modification or enhancement is designed and developed to the 951

specifications of a specific purchaser, remains prewritten 952
computer software; provided, however, that where there is a 953
reasonable, separately stated charge or an invoice or other 954
statement of the price given to the purchaser for the 955
modification or enhancement, the modification or enhancement 956
shall not constitute prewritten computer software. 957

~~(EEE)~~ (CCC) (1) "Food" means substances, whether in liquid, 958
concentrated, solid, frozen, dried, or dehydrated form, that are 959
sold for ingestion or chewing by humans and are consumed for 960
their taste or nutritional value. "Food" does not include 961
alcoholic beverages, dietary supplements, soft drinks, or 962
tobacco. 963

(2) As used in division ~~(EEE)~~ (CCC) (1) of this section: 964

(a) "Alcoholic beverages" means beverages that are 965
suitable for human consumption and contain one-half of one per 966
cent or more of alcohol by volume. 967

(b) "Dietary supplements" means any product, other than 968
tobacco, that is intended to supplement the diet and that is 969
intended for ingestion in tablet, capsule, powder, softgel, 970
gelcap, or liquid form, or, if not intended for ingestion in 971
such a form, is not represented as conventional food for use as 972
a sole item of a meal or of the diet; that is required to be 973
labeled as a dietary supplement, identifiable by the "supplement 974
facts" box found on the label, as required by 21 C.F.R. 101.36; 975
and that contains one or more of the following dietary 976
ingredients: 977

(i) A vitamin; 978

(ii) A mineral; 979

(iii) An herb or other botanical; 980

(iv) An amino acid;	981
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	982 983
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) <u>(CCC)</u> (2) (b) (i) to (v) of this section.	984 985 986
(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	987 988 989 990 991
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	992 993
(FFF) <u>(DDD)</u> "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	994 995 996 997 998 999 1000 1001 1002
(GGG) <u>(EEE)</u> "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	1003 1004 1005 1006
(HHH) <u>(FFF)</u> "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that can withstand repeated use, is primarily and customarily used to	1007 1008 1009

serve a medical purpose, generally is not useful to a person in 1010
the absence of illness or injury, and is not worn in or on the 1011
body. "Durable medical equipment" does not include mobility 1012
enhancing equipment. 1013

~~(III)~~ (GGG) "Mobility enhancing equipment" means 1014
equipment, including repair and replacement parts for such 1015
equipment, that is primarily and customarily used to provide or 1016
increase the ability to move from one place to another and is 1017
appropriate for use either in a home or a motor vehicle, that is 1018
not generally used by persons with normal mobility, and that 1019
does not include any motor vehicle or equipment on a motor 1020
vehicle normally provided by a motor vehicle manufacturer. 1021
"Mobility enhancing equipment" does not include durable medical 1022
equipment. 1023

~~(JJJ)~~ (HHH) "Prosthetic device" means a replacement, 1024
corrective, or supportive device, including repair and 1025
replacement parts for the device, worn on or in the human body 1026
to artificially replace a missing portion of the body, prevent 1027
or correct physical deformity or malfunction, or support a weak 1028
or deformed portion of the body. As used in this division, 1029
"prosthetic device" does not include corrective eyeglasses, 1030
contact lenses, or dental prosthesis. 1031

~~(KKK)~~ (III) (1) "Fractional aircraft ownership program" 1032
means a program in which persons within an affiliated group sell 1033
and manage fractional ownership program aircraft, provided that 1034
at least one hundred airworthy aircraft are operated in the 1035
program and the program meets all of the following criteria: 1036

(a) Management services are provided by at least one 1037
program manager within an affiliated group on behalf of the 1038
fractional owners. 1039

(b) Each program aircraft is owned or possessed by at least one fractional owner. 1040
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(c) Each fractional owner owns or possesses at least a one-sixteenth interest in at least one fixed-wing program aircraft. 1042
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(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners. 1045
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(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program. 1047
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(2) As used in division ~~(KKK)~~(III)(1) of this section: 1050

(a) "Affiliated group" has the same meaning as in division (B) (3) (e) of this section. 1051
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(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division ~~(KKK)~~(III)(1) (e) of this section. 1053
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(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions ~~(KKK)~~(III)(1) (d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program. 1057
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(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division ~~(KKK)~~(III)(1) (e) of this section, and 1064
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offered by the program manager to the fractional owners, 1068
including, at a minimum, the establishment and implementation of 1069
safety guidelines; the coordination of the scheduling of the 1070
program aircraft and crews; program aircraft maintenance; 1071
program aircraft insurance; crew training for crews employed, 1072
furnished, or contracted by the program manager or the 1073
fractional owner; the satisfaction of record-keeping 1074
requirements; and the development and use of an operations 1075
manual and a maintenance manual for the fractional aircraft 1076
ownership program. 1077

(e) "Program manager" means the person that offers 1078
management services to fractional owners pursuant to a 1079
management services agreement under division ~~(KKK)~~ (III) (1) (e) of 1080
this section. 1081

~~(LLL)~~ (JJJ) "Electronic publishing" means providing access 1082
to one or more of the following primarily for business 1083
customers, including the federal government or a state 1084
government or a political subdivision thereof, to conduct 1085
research: news; business, financial, legal, consumer, or credit 1086
materials; editorials, columns, reader commentary, or features; 1087
photos or images; archival or research material; legal notices, 1088
identity verification, or public records; scientific, 1089
educational, instructional, technical, professional, trade, or 1090
other literary materials; or other similar information which has 1091
been gathered and made available by the provider to the consumer 1092
in an electronic format. Providing electronic publishing 1093
includes the functions necessary for the acquisition, 1094
formatting, editing, storage, and dissemination of data or 1095
information that is the subject of a sale. 1096

~~(MMM)~~ (KKK) "Medicaid health insuring corporation" means a 1097

health insuring corporation that holds a certificate of 1098
authority under Chapter 1751. of the Revised Code and is under 1099
contract with the department of job and family services pursuant 1100
to section 5111.17 of the Revised Code. 1101

~~(NNN)~~ (LLL) "Managed care premium" means any premium, 1102
capitation, or other payment a medicaid health insuring 1103
corporation receives for providing or arranging for the 1104
provision of health care services to its members or enrollees 1105
residing in this state. 1106

~~(OOO)~~ (MMM) "Captive deer" means deer and other cervidae 1107
that have been legally acquired, or their offspring, that are 1108
privately owned for agricultural or farming purposes. 1109

~~(PPP)~~ (NNN) "Gift card" means a document, card, 1110
certificate, or other record, whether tangible or intangible, 1111
that may be redeemed by a consumer for a dollar value when 1112
making a purchase of tangible personal property or services. 1113

~~(OOO)~~ (OOO) "Specified digital product" means an 1114
electronically transferred digital audiovisual work, digital 1115
audio work, or digital book. 1116

As used in division ~~(OOO)~~ (OOO) of this section: 1117

(1) "Digital audiovisual work" means a series of related 1118
images that, when shown in succession, impart an impression of 1119
motion, together with accompanying sounds, if any. 1120

(2) "Digital audio work" means a work that results from 1121
the fixation of a series of musical, spoken, or other sounds, 1122
including digitized sound files that are downloaded onto a 1123
device and that may be used to alert the customer with respect 1124
to a communication. 1125

(3) "Digital book" means a work that is generally 1126
recognized in the ordinary and usual sense as a book. 1127

(4) "Electronically transferred" means obtained by the 1128
purchaser by means other than tangible storage media. 1129

Sec. 5739.02. For the purpose of providing revenue with 1130
which to meet the needs of the state, for the use of the general 1131
revenue fund of the state, for the purpose of securing a 1132
thorough and efficient system of common schools throughout the 1133
state, for the purpose of affording revenues, in addition to 1134
those from general property taxes, permitted under 1135
constitutional limitations, and from other sources, for the 1136
support of local governmental functions, and for the purpose of 1137
reimbursing the state for the expense of administering this 1138
chapter, an excise tax is hereby levied on each retail sale made 1139
in this state. 1140

(A) (1) The tax shall be collected as provided in section 1141
5739.025 of the Revised Code. The rate of the tax shall be five 1142
and three-fourths per cent. The tax applies and is collectible 1143
when the sale is made, regardless of the time when the price is 1144
paid or delivered. 1145

(2) In the case of the lease or rental, with a fixed term 1146
of more than thirty days or an indefinite term with a minimum 1147
period of more than thirty days, of any motor vehicles designed 1148
by the manufacturer to carry a load of not more than one ton, 1149
watercraft, outboard motor, or aircraft, or of any tangible 1150
personal property, other than motor vehicles designed by the 1151
manufacturer to carry a load of more than one ton, to be used by 1152
the lessee or renter primarily for business purposes, the tax 1153
shall be collected by the vendor at the time the lease or rental 1154
is consummated and shall be calculated by the vendor on the 1155

basis of the total amount to be paid by the lessee or renter 1156
under the lease agreement. If the total amount of the 1157
consideration for the lease or rental includes amounts that are 1158
not calculated at the time the lease or rental is executed, the 1159
tax shall be calculated and collected by the vendor at the time 1160
such amounts are billed to the lessee or renter. In the case of 1161
an open-end lease or rental, the tax shall be calculated by the 1162
vendor on the basis of the total amount to be paid during the 1163
initial fixed term of the lease or rental, and for each 1164
subsequent renewal period as it comes due. As used in this 1165
division, "motor vehicle" has the same meaning as in section 1166
4501.01 of the Revised Code, and "watercraft" includes an 1167
outdrive unit attached to the watercraft. 1168

A lease with a renewal clause and a termination penalty or 1169
similar provision that applies if the renewal clause is not 1170
exercised is presumed to be a sham transaction. In such a case, 1171
the tax shall be calculated and paid on the basis of the entire 1172
length of the lease period, including any renewal periods, until 1173
the termination penalty or similar provision no longer applies. 1174
The taxpayer shall bear the burden, by a preponderance of the 1175
evidence, that the transaction or series of transactions is not 1176
a sham transaction. 1177

(3) Except as provided in division (A)(2) of this section, 1178
in the case of a sale, the price of which consists in whole or 1179
in part of the lease or rental of tangible personal property, 1180
the tax shall be measured by the installments of that lease or 1181
rental. 1182

(4) In the case of a sale of a physical fitness facility 1183
service or recreation and sports club service, the price of 1184
which consists in whole or in part of a membership for the 1185

receipt of the benefit of the service, the tax applicable to the 1186
sale shall be measured by the installments thereof. 1187

(B) The tax does not apply to the following: 1188

(1) Sales to the state or any of its political 1189
subdivisions, or to any other state or its political 1190
subdivisions if the laws of that state exempt from taxation 1191
sales made to this state and its political subdivisions; 1192

(2) Sales of food for human consumption off the premises 1193
where sold; 1194

(3) Sales of food sold to students only in a cafeteria, 1195
dormitory, fraternity, or sorority maintained in a private, 1196
public, or parochial school, college, or university; 1197

(4) Sales of newspapers and sales or transfers of 1198
magazines distributed as controlled circulation publications; 1199

(5) The furnishing, preparing, or serving of meals without 1200
charge by an employer to an employee provided the employer 1201
records the meals as part compensation for services performed or 1202
work done; 1203

(6) Sales of motor fuel upon receipt, use, distribution, 1204
or sale of which in this state a tax is imposed by the law of 1205
this state, but this exemption shall not apply to the sale of 1206
motor fuel on which a refund of the tax is allowable under 1207
division (A) of section 5735.14 of the Revised Code; and the tax 1208
commissioner may deduct the amount of tax levied by this section 1209
applicable to the price of motor fuel when granting a refund of 1210
motor fuel tax pursuant to division (A) of section 5735.14 of 1211
the Revised Code and shall cause the amount deducted to be paid 1212
into the general revenue fund of this state; 1213

(7) Sales of natural gas by a natural gas company, of 1214
water by a water-works company, or of steam by a heating 1215
company, if in each case the thing sold is delivered to 1216
consumers through pipes or conduits, and all sales of 1217
communications services by a telegraph company, all terms as 1218
defined in section 5727.01 of the Revised Code, and sales of 1219
electricity delivered through wires; 1220

(8) Casual sales by a person, or auctioneer employed 1221
directly by the person to conduct such sales, except as to such 1222
sales of motor vehicles, watercraft or outboard motors required 1223
to be titled under section 1548.06 of the Revised Code, 1224
watercraft documented with the United States coast guard, 1225
snowmobiles, and all-purpose vehicles as defined in section 1226
4519.01 of the Revised Code; 1227

(9) (a) Sales of services or tangible personal property, 1228
other than motor vehicles, mobile homes, and manufactured homes, 1229
by churches, organizations exempt from taxation under section 1230
501(c)(3) of the Internal Revenue Code of 1986, or nonprofit 1231
organizations operated exclusively for charitable purposes as 1232
defined in division (B)(12) of this section, provided that the 1233
number of days on which such tangible personal property or 1234
services, other than items never subject to the tax, are sold 1235
does not exceed six in any calendar year, except as otherwise 1236
provided in division (B)(9)(b) of this section. If the number of 1237
days on which such sales are made exceeds six in any calendar 1238
year, the church or organization shall be considered to be 1239
engaged in business and all subsequent sales by it shall be 1240
subject to the tax. In counting the number of days, all sales by 1241
groups within a church or within an organization shall be 1242
considered to be sales of that church or organization. 1243

(b) The limitation on the number of days on which tax- 1244
exempt sales may be made by a church or organization under 1245
division (B) (9) (a) of this section does not apply to sales made 1246
by student clubs and other groups of students of a primary or 1247
secondary school, or a parent-teacher association, booster 1248
group, or similar organization that raises money to support or 1249
fund curricular or extracurricular activities of a primary or 1250
secondary school. 1251

(c) Divisions (B) (9) (a) and (b) of this section do not 1252
apply to sales by a noncommercial educational radio or 1253
television broadcasting station. 1254

(10) Sales not within the taxing power of this state under 1255
the Constitution or laws of the United States or the 1256
Constitution of this state; 1257

(11) Except for transactions that are sales under division 1258
(B) (3) ~~(r)~~ (p) of section 5739.01 of the Revised Code, the 1259
transportation of persons or property, unless the transportation 1260
is by a private investigation and security service; 1261

(12) Sales of tangible personal property or services to 1262
churches, to organizations exempt from taxation under section 1263
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1264
nonprofit organizations operated exclusively for charitable 1265
purposes in this state, no part of the net income of which 1266
inures to the benefit of any private shareholder or individual, 1267
and no substantial part of the activities of which consists of 1268
carrying on propaganda or otherwise attempting to influence 1269
legislation; sales to offices administering one or more homes 1270
for the aged or one or more hospital facilities exempt under 1271
section 140.08 of the Revised Code; and sales to organizations 1272
described in division (D) of section 5709.12 of the Revised 1273

Code. 1274

"Charitable purposes" means the relief of poverty; the 1275
improvement of health through the alleviation of illness, 1276
disease, or injury; the operation of an organization exclusively 1277
for the provision of professional, laundry, printing, and 1278
purchasing services to hospitals or charitable institutions; the 1279
operation of a home for the aged, as defined in section 5701.13 1280
of the Revised Code; the operation of a radio or television 1281
broadcasting station that is licensed by the federal 1282
communications commission as a noncommercial educational radio 1283
or television station; the operation of a nonprofit animal 1284
adoption service or a county humane society; the promotion of 1285
education by an institution of learning that maintains a faculty 1286
of qualified instructors, teaches regular continuous courses of 1287
study, and confers a recognized diploma upon completion of a 1288
specific curriculum; the operation of a parent-teacher 1289
association, booster group, or similar organization primarily 1290
engaged in the promotion and support of the curricular or 1291
extracurricular activities of a primary or secondary school; the 1292
operation of a community or area center in which presentations 1293
in music, dramatics, the arts, and related fields are made in 1294
order to foster public interest and education therein; the 1295
production of performances in music, dramatics, and the arts; or 1296
the promotion of education by an organization engaged in 1297
carrying on research in, or the dissemination of, scientific and 1298
technological knowledge and information primarily for the 1299
public. 1300

Nothing in this division shall be deemed to exempt sales 1301
to any organization for use in the operation or carrying on of a 1302
trade or business, or sales to a home for the aged for use in 1303
the operation of independent living facilities as defined in 1304

division (A) of section 5709.12 of the Revised Code. 1305

(13) Building and construction materials and services sold 1306
to construction contractors for incorporation into a structure 1307
or improvement to real property under a construction contract 1308
with this state or a political subdivision of this state, or 1309
with the United States government or any of its agencies; 1310
building and construction materials and services sold to 1311
construction contractors for incorporation into a structure or 1312
improvement to real property that are accepted for ownership by 1313
this state or any of its political subdivisions, or by the 1314
United States government or any of its agencies at the time of 1315
completion of the structures or improvements; building and 1316
construction materials sold to construction contractors for 1317
incorporation into a horticulture structure or livestock 1318
structure for a person engaged in the business of horticulture 1319
or producing livestock; building materials and services sold to 1320
a construction contractor for incorporation into a house of 1321
public worship or religious education, or a building used 1322
exclusively for charitable purposes under a construction 1323
contract with an organization whose purpose is as described in 1324
division (B) (12) of this section; building materials and 1325
services sold to a construction contractor for incorporation 1326
into a building under a construction contract with an 1327
organization exempt from taxation under section 501(c) (3) of the 1328
Internal Revenue Code of 1986 when the building is to be used 1329
exclusively for the organization's exempt purposes; building and 1330
construction materials sold for incorporation into the original 1331
construction of a sports facility under section 307.696 of the 1332
Revised Code; building and construction materials and services 1333
sold to a construction contractor for incorporation into real 1334
property outside this state if such materials and services, when 1335

1336 sold to a construction contractor in the state in which the real
1337 property is located for incorporation into real property in that
1338 state, would be exempt from a tax on sales levied by that state;
1339 building and construction materials for incorporation into a
1340 transportation facility pursuant to a public-private agreement
1341 entered into under sections 5501.70 to 5501.83 of the Revised
1342 Code; and, until one calendar year after the construction of a
1343 convention center that qualifies for property tax exemption
1344 under section 5709.084 of the Revised Code is completed,
1345 building and construction materials and services sold to a
1346 construction contractor for incorporation into the real property
1347 comprising that convention center;

1348 (14) Sales of ships or vessels or rail rolling stock used
1349 or to be used principally in interstate or foreign commerce, and
1350 repairs, alterations, fuel, and lubricants for such ships or
1351 vessels or rail rolling stock;

1352 (15) Sales to persons primarily engaged in any of the
1353 activities mentioned in division (B) (42) (a), (g), or (h) of this
1354 section, to persons engaged in making retail sales, or to
1355 persons who purchase for sale from a manufacturer tangible
1356 personal property that was produced by the manufacturer in
1357 accordance with specific designs provided by the purchaser, of
1358 packages, including material, labels, and parts for packages,
1359 and of machinery, equipment, and material for use primarily in
1360 packaging tangible personal property produced for sale,
1361 including any machinery, equipment, and supplies used to make
1362 labels or packages, to prepare packages or products for
1363 labeling, or to label packages or products, by or on the order
1364 of the person doing the packaging, or sold at retail. "Packages"
1365 includes bags, baskets, cartons, crates, boxes, cans, bottles,
1366 bindings, wrappings, and other similar devices and containers,

but does not include motor vehicles or bulk tanks, trailers, or 1367
similar devices attached to motor vehicles. "Packaging" means 1368
placing in a package. Division (B) (15) of this section does not 1369
apply to persons engaged in highway transportation for hire. 1370

(16) Sales of food to persons using supplemental nutrition 1371
assistance program benefits to purchase the food. As used in 1372
this division, "food" has the same meaning as in 7 U.S.C. 2012 1373
and federal regulations adopted pursuant to the Food and 1374
Nutrition Act of 2008. 1375

(17) Sales to persons engaged in farming, agriculture, 1376
horticulture, or floriculture, of tangible personal property for 1377
use or consumption primarily in the production by farming, 1378
agriculture, horticulture, or floriculture of other tangible 1379
personal property for use or consumption primarily in the 1380
production of tangible personal property for sale by farming, 1381
agriculture, horticulture, or floriculture; or material and 1382
parts for incorporation into any such tangible personal property 1383
for use or consumption in production; and of tangible personal 1384
property for such use or consumption in the conditioning or 1385
holding of products produced by and for such use, consumption, 1386
or sale by persons engaged in farming, agriculture, 1387
horticulture, or floriculture, except where such property is 1388
incorporated into real property; 1389

(18) Sales of drugs for a human being that may be 1390
dispensed only pursuant to a prescription; insulin as recognized 1391
in the official United States pharmacopoeia; urine and blood 1392
testing materials when used by diabetics or persons with 1393
hypoglycemia to test for glucose or acetone; hypodermic syringes 1394
and needles when used by diabetics for insulin injections; 1395
epoetin alfa when purchased for use in the treatment of persons 1396

with medical disease; hospital beds when purchased by hospitals,	1397
nursing homes, or other medical facilities; and medical oxygen	1398
and medical oxygen-dispensing equipment when purchased by	1399
hospitals, nursing homes, or other medical facilities;	1400
(19) Sales of prosthetic devices, durable medical	1401
equipment for home use, or mobility enhancing equipment, when	1402
made pursuant to a prescription and when such devices or	1403
equipment are for use by a human being.	1404
(20) Sales of emergency and fire protection vehicles and	1405
equipment to nonprofit organizations for use solely in providing	1406
fire protection and emergency services, including trauma care	1407
and emergency medical services, for political subdivisions of	1408
the state;	1409
(21) Sales of tangible personal property manufactured in	1410
this state, if sold by the manufacturer in this state to a	1411
retailer for use in the retail business of the retailer outside	1412
of this state and if possession is taken from the manufacturer	1413
by the purchaser within this state for the sole purpose of	1414
immediately removing the same from this state in a vehicle owned	1415
by the purchaser;	1416
(22) Sales of services provided by the state or any of its	1417
political subdivisions, agencies, instrumentalities,	1418
institutions, or authorities, or by governmental entities of the	1419
state or any of its political subdivisions, agencies,	1420
instrumentalities, institutions, or authorities;	1421
(23) Sales of motor vehicles to nonresidents of this state	1422
under the circumstances described in division (B) of section	1423
5739.029 of the Revised Code;	1424
(24) Sales to persons engaged in the preparation of eggs	1425

for sale of tangible personal property used or consumed directly 1426
in such preparation, including such tangible personal property 1427
used for cleaning, sanitizing, preserving, grading, sorting, and 1428
classifying by size; packages, including material and parts for 1429
packages, and machinery, equipment, and material for use in 1430
packaging eggs for sale; and handling and transportation 1431
equipment and parts therefor, except motor vehicles licensed to 1432
operate on public highways, used in intraplant or interplant 1433
transfers or shipment of eggs in the process of preparation for 1434
sale, when the plant or plants within or between which such 1435
transfers or shipments occur are operated by the same person. 1436
"Packages" includes containers, cases, baskets, flats, fillers, 1437
filler flats, cartons, closure materials, labels, and labeling 1438
materials, and "packaging" means placing therein. 1439

(25) (a) Sales of water to a consumer for residential use; 1440

(b) Sales of water by a nonprofit corporation engaged 1441
exclusively in the treatment, distribution, and sale of water to 1442
consumers, if such water is delivered to consumers through pipes 1443
or tubing. 1444

(26) Fees charged for inspection or reinspection of motor 1445
vehicles under section 3704.14 of the Revised Code; 1446

(27) Sales to persons licensed to conduct a food service 1447
operation pursuant to section 3717.43 of the Revised Code, of 1448
tangible personal property primarily used directly for the 1449
following: 1450

(a) To prepare food for human consumption for sale; 1451

(b) To preserve food that has been or will be prepared for 1452
human consumption for sale by the food service operator, not 1453
including tangible personal property used to display food for 1454

selection by the consumer;	1455
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	1456 1457
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	1458 1459
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	1460 1461 1462 1463
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	1464 1465 1466
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code;	1467 1468 1469
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;	1470 1471 1472 1473 1474 1475
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	1476 1477 1478 1479 1480
(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting	1481 1482

service vendor of tangible personal property and services used 1483
directly and primarily in transmitting, receiving, switching, or 1484
recording any interactive, one- or two-way electromagnetic 1485
communications, including voice, image, data, and information, 1486
through the use of any medium, including, but not limited to, 1487
poles, wires, cables, switching equipment, computers, and record 1488
storage devices and media, and component parts for the tangible 1489
personal property. The exemption provided in this division shall 1490
be in lieu of all other exemptions under division (B) (42) (a) or 1491
(n) of this section to which the vendor may otherwise be 1492
entitled, based upon the use of the thing purchased in providing 1493
the telecommunications, mobile telecommunications, or satellite 1494
broadcasting service. 1495

(35) (a) Sales where the purpose of the consumer is to use 1496
or consume the things transferred in making retail sales and 1497
consisting of newspaper inserts, catalogues, coupons, flyers, 1498
gift certificates, or other advertising material that prices and 1499
describes tangible personal property offered for retail sale. 1500

(b) Sales to direct marketing vendors of preliminary 1501
materials such as photographs, artwork, and typesetting that 1502
will be used in printing advertising material; and of printed 1503
matter that offers free merchandise or chances to win sweepstake 1504
prizes and that is mailed to potential customers with 1505
advertising material described in division (B) (35) (a) of this 1506
section; 1507

(c) Sales of equipment such as telephones, computers, 1508
facsimile machines, and similar tangible personal property 1509
primarily used to accept orders for direct marketing retail 1510
sales. 1511

(d) Sales of automatic food vending machines that preserve 1512

food with a shelf life of forty-five days or less by 1513
refrigeration and dispense it to the consumer. 1514

For purposes of division (B) (35) of this section, "direct 1515
marketing" means the method of selling where consumers order 1516
tangible personal property by United States mail, delivery 1517
service, or telecommunication and the vendor delivers or ships 1518
the tangible personal property sold to the consumer from a 1519
warehouse, catalogue distribution center, or similar fulfillment 1520
facility by means of the United States mail, delivery service, 1521
or common carrier. 1522

(36) Sales to a person engaged in the business of 1523
horticulture or producing livestock of materials to be 1524
incorporated into a horticulture structure or livestock 1525
structure; 1526

(37) Sales of personal computers, computer monitors, 1527
computer keyboards, modems, and other peripheral computer 1528
equipment to an individual who is licensed or certified to teach 1529
in an elementary or a secondary school in this state for use by 1530
that individual in preparation for teaching elementary or 1531
secondary school students; 1532

(38) Sales to a professional racing team of any of the 1533
following: 1534

(a) Motor racing vehicles; 1535

(b) Repair services for motor racing vehicles; 1536

(c) Items of property that are attached to or incorporated 1537
in motor racing vehicles, including engines, chassis, and all 1538
other components of the vehicles, and all spare, replacement, 1539
and rebuilt parts or components of the vehicles; except not 1540
including tires, consumable fluids, paint, and accessories 1541

consisting of instrumentation sensors and related items added to 1542
the vehicle to collect and transmit data by means of telemetry 1543
and other forms of communication. 1544

(39) Sales of used manufactured homes and used mobile 1545
homes, as defined in section 5739.0210 of the Revised Code, made 1546
on or after January 1, 2000; 1547

(40) Sales of tangible personal property and services to a 1548
provider of electricity used or consumed directly and primarily 1549
in generating, transmitting, or distributing electricity for use 1550
by others, including property that is or is to be incorporated 1551
into and will become a part of the consumer's production, 1552
transmission, or distribution system and that retains its 1553
classification as tangible personal property after 1554
incorporation; fuel or power used in the production, 1555
transmission, or distribution of electricity; energy conversion 1556
equipment as defined in section 5727.01 of the Revised Code; and 1557
tangible personal property and services used in the repair and 1558
maintenance of the production, transmission, or distribution 1559
system, including only those motor vehicles as are specially 1560
designed and equipped for such use. The exemption provided in 1561
this division shall be in lieu of all other exemptions in 1562
division (B) (42) (a) or (n) of this section to which a provider 1563
of electricity may otherwise be entitled based on the use of the 1564
tangible personal property or service purchased in generating, 1565
transmitting, or distributing electricity. 1566

(41) Sales to a person providing services under division 1567
(B) (3) ~~(r)~~ (p) of section 5739.01 of the Revised Code of tangible 1568
personal property and services used directly and primarily in 1569
providing taxable services under that section. 1570

(42) Sales where the purpose of the purchaser is to do any 1571

of the following: 1572

(a) To incorporate the thing transferred as a material or 1573
a part into tangible personal property to be produced for sale 1574
by manufacturing, assembling, processing, or refining; or to use 1575
or consume the thing transferred directly in producing tangible 1576
personal property for sale by mining, including, without 1577
limitation, the extraction from the earth of all substances that 1578
are classed geologically as minerals, production of crude oil 1579
and natural gas, or directly in the rendition of a public 1580
utility service, except that the sales tax levied by this 1581
section shall be collected upon all meals, drinks, and food for 1582
human consumption sold when transporting persons. Persons 1583
engaged in rendering services in the exploration for, and 1584
production of, crude oil and natural gas for others are deemed 1585
engaged directly in the exploration for, and production of, 1586
crude oil and natural gas. This paragraph does not exempt from 1587
"retail sale" or "sales at retail" the sale of tangible personal 1588
property that is to be incorporated into a structure or 1589
improvement to real property. 1590

(b) To hold the thing transferred as security for the 1591
performance of an obligation of the vendor; 1592

(c) To resell, hold, use, or consume the thing transferred 1593
as evidence of a contract of insurance; 1594

(d) To use or consume the thing directly in commercial 1595
fishing; 1596

(e) To incorporate the thing transferred as a material or 1597
a part into, or to use or consume the thing transferred directly 1598
in the production of, magazines distributed as controlled 1599
circulation publications; 1600

(f) To use or consume the thing transferred in the 1601
production and preparation in suitable condition for market and 1602
sale of printed, imprinted, overprinted, lithographic, 1603
multilithic, blueprinted, photostatic, or other productions or 1604
reproductions of written or graphic matter; 1605

(g) To use the thing transferred, as described in section 1606
5739.011 of the Revised Code, primarily in a manufacturing 1607
operation to produce tangible personal property for sale; 1608

(h) To use the benefit of a warranty, maintenance or 1609
service contract, or similar agreement, as described in division 1610
(B) (7) of section 5739.01 of the Revised Code, to repair or 1611
maintain tangible personal property, if all of the property that 1612
is the subject of the warranty, contract, or agreement would not 1613
be subject to the tax imposed by this section; 1614

(i) To use the thing transferred as qualified research and 1615
development equipment; 1616

(j) To use or consume the thing transferred primarily in 1617
storing, transporting, mailing, or otherwise handling purchased 1618
sales inventory in a warehouse, distribution center, or similar 1619
facility when the inventory is primarily distributed outside 1620
this state to retail stores of the person who owns or controls 1621
the warehouse, distribution center, or similar facility, to 1622
retail stores of an affiliated group of which that person is a 1623
member, or by means of direct marketing. This division does not 1624
apply to motor vehicles registered for operation on the public 1625
highways. As used in this division, "affiliated group" has the 1626
same meaning as in division (B) (3) (e) of section 5739.01 of the 1627
Revised Code and "direct marketing" has the same meaning as in 1628
division (B) (35) of this section. 1629

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

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

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

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

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

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

(43) Sales conducted through a coin operated device that 1659
activates vacuum equipment or equipment that dispenses water, 1660
whether or not in combination with soap or other cleaning agents 1661
or wax, to the consumer for the consumer's use on the premises 1662
in washing, cleaning, or waxing a motor vehicle, provided no 1663
other personal property or personal service is provided as part 1664
of the transaction. 1665

(44) Sales of replacement and modification parts for 1666
engines, airframes, instruments, and interiors in, and paint 1667
for, aircraft used primarily in a fractional aircraft ownership 1668
program, and sales of services for the repair, modification, and 1669
maintenance of such aircraft, and machinery, equipment, and 1670
supplies primarily used to provide those services. 1671

(45) Sales of telecommunications service that is used 1672
directly and primarily to perform the functions of a call 1673
center. As used in this division, "call center" means any 1674
physical location where telephone calls are placed or received 1675
in high volume for the purpose of making sales, marketing, 1676
customer service, technical support, or other specialized 1677
business activity, and that employs at least fifty individuals 1678
that engage in call center activities on a full-time basis, or 1679
sufficient individuals to fill fifty full-time equivalent 1680
positions. 1681

(46) Sales by a telecommunications service vendor of 900 1682
service to a subscriber. This division does not apply to 1683
information services, as defined in division (FF) of section 1684
5739.01 of the Revised Code. 1685

(47) Sales of value-added non-voice data service. This 1686
division does not apply to any similar service that is not 1687
otherwise a telecommunications service. 1688

(48) (a) Sales of machinery, equipment, and software to a 1689
qualified direct selling entity for use in a warehouse or 1690
distribution center primarily for storing, transporting, or 1691
otherwise handling inventory that is held for sale to 1692
independent salespersons who operate as direct sellers and that 1693
is held primarily for distribution outside this state; 1694

(b) As used in division (B) (48) (a) of this section: 1695

(i) "Direct seller" means a person selling consumer 1696
products to individuals for personal or household use and not 1697
from a fixed retail location, including selling such product at 1698
in-home product demonstrations, parties, and other one-on-one 1699
selling. 1700

(ii) "Qualified direct selling entity" means an entity 1701
selling to direct sellers at the time the entity enters into a 1702
tax credit agreement with the tax credit authority pursuant to 1703
section 122.17 of the Revised Code, provided that the agreement 1704
was entered into on or after January 1, 2007. Neither 1705
contingencies relevant to the granting of, nor later 1706
developments with respect to, the tax credit shall impair the 1707
status of the qualified direct selling entity under division (B) 1708
(48) of this section after execution of the tax credit agreement 1709
by the tax credit authority. 1710

(c) Division (B) (48) of this section is limited to 1711
machinery, equipment, and software first stored, used, or 1712
consumed in this state within the period commencing June 24, 1713
2008, and ending on the date that is five years after that date. 1714

(49) Sales of materials, parts, equipment, or engines used 1715
in the repair or maintenance of aircraft or avionics systems of 1716
such aircraft, and sales of repair, remodeling, replacement, or 1717

maintenance services in this state performed on aircraft or on 1718
an aircraft's avionics, engine, or component materials or parts. 1719
As used in division (B) (49) of this section, "aircraft" means 1720
aircraft of more than six thousand pounds maximum certified 1721
takeoff weight or used exclusively in general aviation. 1722

(50) Sales of full flight simulators that are used for 1723
pilot or flight-crew training, sales of repair or replacement 1724
parts or components, and sales of repair or maintenance services 1725
for such full flight simulators. "Full flight simulator" means a 1726
replica of a specific type, or make, model, and series of 1727
aircraft cockpit. It includes the assemblage of equipment and 1728
computer programs necessary to represent aircraft operations in 1729
ground and flight conditions, a visual system providing an out- 1730
of-the-cockpit view, and a system that provides cues at least 1731
equivalent to those of a three-degree-of-freedom motion system, 1732
and has the full range of capabilities of the systems installed 1733
in the device as described in appendices A and B of part 60 of 1734
chapter 1 of title 14 of the Code of Federal Regulations. 1735

(51) Any transfer or lease of tangible personal property 1736
between the state and JobsOhio in accordance with section 1737
4313.02 of the Revised Code. 1738

(52) (a) Sales to a qualifying corporation. 1739

(b) As used in division (B) (52) of this section: 1740

(i) "Qualifying corporation" means a nonprofit corporation 1741
organized in this state that leases from an eligible county 1742
land, buildings, structures, fixtures, and improvements to the 1743
land that are part of or used in a public recreational facility 1744
used by a major league professional athletic team or a class A 1745
to class AAA minor league affiliate of a major league 1746

professional athletic team for a significant portion of the 1747
team's home schedule, provided the following apply: 1748

(I) The facility is leased from the eligible county 1749
pursuant to a lease that requires substantially all of the 1750
revenue from the operation of the business or activity conducted 1751
by the nonprofit corporation at the facility in excess of 1752
operating costs, capital expenditures, and reserves to be paid 1753
to the eligible county at least once per calendar year. 1754

(II) Upon dissolution and liquidation of the nonprofit 1755
corporation, all of its net assets are distributable to the 1756
board of commissioners of the eligible county from which the 1757
corporation leases the facility. 1758

(ii) "Eligible county" has the same meaning as in section 1759
307.695 of the Revised Code. 1760

(53) Sales to or by a cable service provider, video 1761
service provider, or radio or television broadcast station 1762
regulated by the federal government of cable service or 1763
programming, video service or programming, audio service or 1764
programming, or electronically transferred digital audiovisual 1765
or audio work. As used in division (B) (53) of this section, 1766
"cable service" and "cable service provider" have the same 1767
meanings as in section 1332.01 of the Revised Code, and "video 1768
service," "video service provider," and "video programming" have 1769
the same meanings as in section 1332.21 of the Revised Code. 1770

(C) For the purpose of the proper administration of this 1771
chapter, and to prevent the evasion of the tax, it is presumed 1772
that all sales made in this state are subject to the tax until 1773
the contrary is established. 1774

(D) The levy of this tax on retail sales of recreation and 1775

sports club service shall not prevent a municipal corporation 1776
from levying any tax on recreation and sports club dues or on 1777
any income generated by recreation and sports club dues. 1778

(E) The tax collected by the vendor from the consumer 1779
under this chapter is not part of the price, but is a tax 1780
collection for the benefit of the state, and of counties levying 1781
an additional sales tax pursuant to section 5739.021 or 5739.026 1782
of the Revised Code and of transit authorities levying an 1783
additional sales tax pursuant to section 5739.023 of the Revised 1784
Code. Except for the discount authorized under section 5739.12 1785
of the Revised Code and the effects of any rounding pursuant to 1786
section 5703.055 of the Revised Code, no person other than the 1787
state or such a county or transit authority shall derive any 1788
benefit from the collection or payment of the tax levied by this 1789
section or section 5739.021, 5739.023, or 5739.026 of the 1790
Revised Code. 1791

Sec. 5741.01. As used in this chapter: 1792

(A) "Person" includes individuals, receivers, assignees, 1793
trustees in bankruptcy, estates, firms, partnerships, 1794
associations, joint-stock companies, joint ventures, clubs, 1795
societies, corporations, business trusts, governments, and 1796
combinations of individuals of any form. 1797

(B) "Storage" means and includes any keeping or retention 1798
in this state for use or other consumption in this state. 1799

(C) "Use" means and includes the exercise of any right or 1800
power incidental to the ownership of the thing used. A thing is 1801
also "used" in this state if its consumer gives or otherwise 1802
distributes it, without charge, to recipients in this state. 1803

(D) "Purchase" means acquired or received for a 1804

consideration, whether such acquisition or receipt was effected 1805
by a transfer of title, or of possession, or of both, or a 1806
license to use or consume; whether such transfer was absolute or 1807
conditional, and by whatever means the transfer was effected; 1808
and whether the consideration was money, credit, barter, or 1809
exchange. Purchase includes production, even though the article 1810
produced was used, stored, or consumed by the producer. The 1811
transfer of copyrighted motion picture films for exhibition 1812
purposes is not a purchase, except such films as are used solely 1813
for advertising purposes. 1814

(E) "Seller" means the person from whom a purchase is 1815
made, and includes every person engaged in this state or 1816
elsewhere in the business of selling tangible personal property 1817
or providing a service for storage, use, or other consumption or 1818
benefit in this state; and when, in the opinion of the tax 1819
commissioner, it is necessary for the efficient administration 1820
of this chapter, to regard any salesperson, representative, 1821
peddler, or canvasser as the agent of a dealer, distributor, 1822
supervisor, or employer under whom the person operates, or from 1823
whom the person obtains tangible personal property, sold by the 1824
person for storage, use, or other consumption in this state, 1825
irrespective of whether or not the person is making such sales 1826
on the person's own behalf, or on behalf of such dealer, 1827
distributor, supervisor, or employer, the commissioner may 1828
regard the person as such agent, and may regard such dealer, 1829
distributor, supervisor, or employer as the seller. "Seller" 1830
does not include any person to the extent the person provides a 1831
communications medium, such as, but not limited to, newspapers, 1832
magazines, radio, television, or cable television, by means of 1833
which sellers solicit purchases of their goods or services. 1834

(F) "Consumer" means any person who has purchased tangible 1835

personal property or has been provided a service for storage, 1836
use, or other consumption or benefit in this state. "Consumer" 1837
does not include a person who receives, without charge, tangible 1838
personal property or a service. 1839

A person who performs a facility management or similar 1840
service contract for a contractee is a consumer of all tangible 1841
personal property and services purchased for use in connection 1842
with the performance of such contract, regardless of whether 1843
title to any such property vests in the contractee. The purchase 1844
of such property and services is not subject to the exception 1845
for resale under division (E) of section 5739.01 of the Revised 1846
Code. 1847

(G) (1) "Price," except as provided in divisions (G) (2) to 1848
(6) of this section, has the same meaning as in division (H) (1) 1849
of section 5739.01 of the Revised Code. 1850

(2) In the case of watercraft, outboard motors, or new 1851
motor vehicles, "price" has the same meaning as in divisions (H) 1852
(2) and (3) of section 5739.01 of the Revised Code. 1853

(3) In the case of a nonresident business consumer that 1854
purchases and uses tangible personal property outside this state 1855
and subsequently temporarily stores, uses, or otherwise consumes 1856
such tangible personal property in the conduct of business in 1857
this state, the consumer or the tax commissioner may determine 1858
the price based on the value of the temporary storage, use, or 1859
other consumption, in lieu of determining the price pursuant to 1860
division (G) (1) of this section. A price determination made by 1861
the consumer is subject to review and redetermination by the 1862
commissioner. 1863

(4) In the case of tangible personal property held in this 1864

state as inventory for sale or lease, and that is temporarily 1865
stored, used, or otherwise consumed in a taxable manner, the 1866
price is the value of the temporary use. A price determination 1867
made by the consumer is subject to review and redetermination by 1868
the commissioner. 1869

(5) In the case of tangible personal property originally 1870
purchased and used by the consumer outside this state, and that 1871
becomes permanently stored, used, or otherwise consumed in this 1872
state more than six months after its acquisition by the 1873
consumer, the consumer or the commissioner may determine the 1874
price based on the current value of such tangible personal 1875
property, in lieu of determining the price pursuant to division 1876
(G) (1) of this section. A price determination made by the 1877
consumer is subject to review and redetermination by the 1878
commissioner. 1879

(6) If a consumer produces tangible personal property for 1880
sale and removes that property from inventory for the consumer's 1881
own use, the price is the produced cost of that tangible 1882
personal property. 1883

(H) "Nexus with this state" means that the seller engages 1884
in continuous and widespread solicitation of purchases from 1885
residents of this state or otherwise purposefully directs its 1886
business activities at residents of this state. 1887

(I) "Substantial nexus with this state" means that the 1888
seller has sufficient contact with this state, in accordance 1889
with Section 8 of Article I of the Constitution of the United 1890
States, to allow the state to require the seller to collect and 1891
remit use tax on sales of tangible personal property or services 1892
made to consumers in this state. "Substantial nexus with this 1893
state" exists when the seller does any of the following: 1894

- (1) Maintains a place of business within this state, 1895
whether operated by employees or agents of the seller, by a 1896
member of an affiliated group, as defined in division (B) (3) (e) 1897
of section 5739.01 of the Revised Code, of which the seller is a 1898
member, or by a franchisee using a trade name of the seller; 1899
- (2) Regularly has employees, agents, representatives, 1900
solicitors, installers, repairmen, salesmen, or other 1901
individuals in this state for the purpose of conducting the 1902
business of the seller; 1903
- (3) Uses a person in this state for the purpose of 1904
receiving or processing orders of the seller's goods or 1905
services; 1906
- (4) Makes regular deliveries of tangible personal property 1907
into this state by means other than common carrier; 1908
- (5) Has membership in an affiliated group, as described in 1909
division (B) (3) (e) of section 5739.01 of the Revised Code, at 1910
least one other member of which has substantial nexus with this 1911
state; 1912
- (6) Owns tangible personal property that is rented or 1913
leased to a consumer in this state, or offers tangible personal 1914
property, on approval, to consumers in this state; 1915
- (7) Except as provided in section 5703.65 of the Revised 1916
Code, is registered with the secretary of state to do business 1917
in this state or is registered or licensed by any state agency, 1918
board, or commission to transact business in this state or to 1919
make sales to persons in this state; 1920
- (8) Has any other contact with this state that would allow 1921
this state to require the seller to collect and remit use tax 1922
under Section 8 of Article I of the Constitution of the United 1923

States. 1924

(J) "Fiscal officer" means, with respect to a regional 1925
transit authority, the secretary-treasurer thereof, and with 1926
respect to a county which is a transit authority, the fiscal 1927
officer of the county transit board appointed pursuant to 1928
section 306.03 of the Revised Code or, if the board of county 1929
commissioners operates the county transit system, the county 1930
auditor. 1931

(K) "Territory of the transit authority" means all of the 1932
area included within the territorial boundaries of a transit 1933
authority as they from time to time exist. Such territorial 1934
boundaries must at all times include all the area of a single 1935
county or all the area of the most populous county which is a 1936
part of such transit authority. County population shall be 1937
measured by the most recent census taken by the United States 1938
census bureau. 1939

(L) "Transit authority" means a regional transit authority 1940
created pursuant to section 306.31 of the Revised Code or a 1941
county in which a county transit system is created pursuant to 1942
section 306.01 of the Revised Code. For the purposes of this 1943
chapter, a transit authority must extend to at least the entire 1944
area of a single county. A transit authority which includes 1945
territory in more than one county must include all the area of 1946
the most populous county which is a part of such transit 1947
authority. County population shall be measured by the most 1948
recent census taken by the United States census bureau. 1949

(M) "Providing a service" has the same meaning as in 1950
division (X) of section 5739.01 of the Revised Code. 1951

(N) "Other consumption" includes receiving the benefits of 1952

a service. 1953

(O) "Lease" or "rental" has the same meaning as in 1954
division ~~(UU)~~ (SS) of section 5739.01 of the Revised Code. 1955

(P) "Certified service provider" has the same meaning as 1956
in section 5740.01 of the Revised Code. 1957

(Q) "Remote sale" means a sale for which the seller could 1958
not be legally required to pay, collect, or remit a tax imposed 1959
under this chapter or Chapter 5739. of the Revised Code, unless 1960
otherwise provided by the laws of the United States. 1961

(R) "Remote seller" means a seller that makes remote sales 1962
to one or more consumers. 1963

(S) "Remote small seller" means a remote seller that has 1964
gross annual receipts from remote sales in the United States not 1965
exceeding one million dollars for the preceding calendar year. 1966
For the purposes of determining whether a person is a small 1967
remote seller, the sales of all persons related within the 1968
meaning of subsection (b) or (c) of section 267 or section 1969
707(b)(1) of the Internal Revenue Code shall be aggregated, and 1970
persons with one or more ownership relationships shall be 1971
aggregated if those relationships were designed with the 1972
principal purpose to qualify as a remote small seller. 1973

Section 2. That existing sections 5739.01, 5739.02, and 1974
5741.01 of the Revised Code are hereby repealed. 1975

Section 3. The amendment by this act of sections 5739.01, 1976
5739.02, and 5741.01 of the Revised Code applies on and after 1977
January 1, 2016. 1978