

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 100**

**Senator Brown**

**Cosponsors: Senators Sawyer, Tavares, Thomas, Yuko**

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**A BILL**

To amend sections 5739.02 and 5739.05 of the 1  
Revised Code to provide a three-day sales tax 2  
"holiday" each April during which sales of 3  
qualifying Energy Star products are exempt from 4  
sales and use taxes. 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	78 79 80 81
(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;	82 83 84 85 86 87 88 89 90 91
(7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through pipes or conduits, and all sales of communications services by a telegraph company, all terms as defined in section 5727.01 of the Revised Code, and sales of electricity delivered through wires;	92 93 94 95 96 97 98
(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;	99 100 101 102 103 104 105
(9) (a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes,	106 107

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

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

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

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

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

transportation of persons or property, unless the transportation 138  
is by a private investigation and security service; 139

(12) Sales of tangible personal property or services to 140  
churches, to organizations exempt from taxation under section 141  
501(c)(3) of the Internal Revenue Code of 1986, and to any other 142  
nonprofit organizations operated exclusively for charitable 143  
purposes in this state, no part of the net income of which 144  
inures to the benefit of any private shareholder or individual, 145  
and no substantial part of the activities of which consists of 146  
carrying on propaganda or otherwise attempting to influence 147  
legislation; sales to offices administering one or more homes 148  
for the aged or one or more hospital facilities exempt under 149  
section 140.08 of the Revised Code; and sales to organizations 150  
described in division (D) of section 5709.12 of the Revised 151  
Code. 152

"Charitable purposes" means the relief of poverty; the 153  
improvement of health through the alleviation of illness, 154  
disease, or injury; the operation of an organization exclusively 155  
for the provision of professional, laundry, printing, and 156  
purchasing services to hospitals or charitable institutions; the 157  
operation of a home for the aged, as defined in section 5701.13 158  
of the Revised Code; the operation of a radio or television 159  
broadcasting station that is licensed by the federal 160  
communications commission as a noncommercial educational radio 161  
or television station; the operation of a nonprofit animal 162  
adoption service or a county humane society; the promotion of 163  
education by an institution of learning that maintains a faculty 164  
of qualified instructors, teaches regular continuous courses of 165  
study, and confers a recognized diploma upon completion of a 166  
specific curriculum; the operation of a parent-teacher 167  
association, booster group, or similar organization primarily 168

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

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

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

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

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

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



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

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

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

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

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

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

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

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

by the purchaser within this state for the sole purpose of 292  
immediately removing the same from this state in a vehicle owned 293  
by the purchaser; 294

(22) Sales of services provided by the state or any of its 295  
political subdivisions, agencies, instrumentalities, 296  
institutions, or authorities, or by governmental entities of the 297  
state or any of its political subdivisions, agencies, 298  
instrumentalities, institutions, or authorities; 299

(23) Sales of motor vehicles to nonresidents of this state 300  
under the circumstances described in division (B) of section 301  
5739.029 of the Revised Code; 302

(24) Sales to persons engaged in the preparation of eggs 303  
for sale of tangible personal property used or consumed directly 304  
in such preparation, including such tangible personal property 305  
used for cleaning, sanitizing, preserving, grading, sorting, and 306  
classifying by size; packages, including material and parts for 307  
packages, and machinery, equipment, and material for use in 308  
packaging eggs for sale; and handling and transportation 309  
equipment and parts therefor, except motor vehicles licensed to 310  
operate on public highways, used in intraplant or interplant 311  
transfers or shipment of eggs in the process of preparation for 312  
sale, when the plant or plants within or between which such 313  
transfers or shipments occur are operated by the same person. 314  
"Packages" includes containers, cases, baskets, flats, fillers, 315  
filler flats, cartons, closure materials, labels, and labeling 316  
materials, and "packaging" means placing therein. 317

(25) (a) Sales of water to a consumer for residential use; 318

(b) Sales of water by a nonprofit corporation engaged 319  
exclusively in the treatment, distribution, and sale of water to 320

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

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

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

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

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

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

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

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

(a) Motor racing vehicles; 413

(b) Repair services for motor racing vehicles; 414

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

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

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

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

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

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

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



"retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property. 466  
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(b) To hold the thing transferred as security for the performance of an obligation of the vendor; 469  
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(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance; 471  
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(d) To use or consume the thing directly in commercial fishing; 473  
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(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications; 475  
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(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter; 479  
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(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale; 484  
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(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section; 487  
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(i) To use the thing transferred as qualified research and 493

development equipment; 494

(j) To use or consume the thing transferred primarily in 495  
storing, transporting, mailing, or otherwise handling purchased 496  
sales inventory in a warehouse, distribution center, or similar 497  
facility when the inventory is primarily distributed outside 498  
this state to retail stores of the person who owns or controls 499  
the warehouse, distribution center, or similar facility, to 500  
retail stores of an affiliated group of which that person is a 501  
member, or by means of direct marketing. This division does not 502  
apply to motor vehicles registered for operation on the public 503  
highways. As used in this division, "affiliated group" has the 504  
same meaning as in division (B) (3) (e) of section 5739.01 of the 505  
Revised Code and "direct marketing" has the same meaning as in 506  
division (B) (35) of this section. 507

(k) To use or consume the thing transferred to fulfill a 508  
contractual obligation incurred by a warrantor pursuant to a 509  
warranty provided as a part of the price of the tangible 510  
personal property sold or by a vendor of a warranty, maintenance 511  
or service contract, or similar agreement the provision of which 512  
is defined as a sale under division (B) (7) of section 5739.01 of 513  
the Revised Code; 514

(l) To use or consume the thing transferred in the 515  
production of a newspaper for distribution to the public; 516

(m) To use tangible personal property to perform a service 517  
listed in division (B) (3) of section 5739.01 of the Revised 518  
Code, if the property is or is to be permanently transferred to 519  
the consumer of the service as an integral part of the 520  
performance of the service; 521

(n) To use or consume the thing transferred primarily in 522

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

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

As used in division (B) (42) of this section, "thing" 534  
includes all transactions included in divisions (B) (3) (a), (b), 535  
and (e) of section 5739.01 of the Revised Code. 536

(43) Sales conducted through a coin operated device that 537  
activates vacuum equipment or equipment that dispenses water, 538  
whether or not in combination with soap or other cleaning agents 539  
or wax, to the consumer for the consumer's use on the premises 540  
in washing, cleaning, or waxing a motor vehicle, provided no 541  
other personal property or personal service is provided as part 542  
of the transaction. 543

(44) Sales of replacement and modification parts for 544  
engines, airframes, instruments, and interiors in, and paint 545  
for, aircraft used primarily in a fractional aircraft ownership 546  
program, and sales of services for the repair, modification, and 547  
maintenance of such aircraft, and machinery, equipment, and 548  
supplies primarily used to provide those services. 549

(45) Sales of telecommunications service that is used 550  
directly and primarily to perform the functions of a call 551

center. As used in this division, "call center" means any 552  
physical location where telephone calls are placed or received 553  
in high volume for the purpose of making sales, marketing, 554  
customer service, technical support, or other specialized 555  
business activity, and that employs at least fifty individuals 556  
that engage in call center activities on a full-time basis, or 557  
sufficient individuals to fill fifty full-time equivalent 558  
positions. 559

(46) Sales by a telecommunications service vendor of 900 560  
service to a subscriber. This division does not apply to 561  
information services, as defined in division (FF) of section 562  
5739.01 of the Revised Code. 563

(47) Sales of value-added non-voice data service. This 564  
division does not apply to any similar service that is not 565  
otherwise a telecommunications service. 566

(48) (a) Sales of machinery, equipment, and software to a 567  
qualified direct selling entity for use in a warehouse or 568  
distribution center primarily for storing, transporting, or 569  
otherwise handling inventory that is held for sale to 570  
independent salespersons who operate as direct sellers and that 571  
is held primarily for distribution outside this state; 572

(b) As used in division (B) (48) (a) of this section: 573

(i) "Direct seller" means a person selling consumer 574  
products to individuals for personal or household use and not 575  
from a fixed retail location, including selling such product at 576  
in-home product demonstrations, parties, and other one-on-one 577  
selling. 578

(ii) "Qualified direct selling entity" means an entity 579  
selling to direct sellers at the time the entity enters into a 580

tax credit agreement with the tax credit authority pursuant to 581  
section 122.17 of the Revised Code, provided that the agreement 582  
was entered into on or after January 1, 2007. Neither 583  
contingencies relevant to the granting of, nor later 584  
developments with respect to, the tax credit shall impair the 585  
status of the qualified direct selling entity under division (B) 586  
(48) of this section after execution of the tax credit agreement 587  
by the tax credit authority. 588

(c) Division (B) (48) of this section is limited to 589  
machinery, equipment, and software first stored, used, or 590  
consumed in this state within the period commencing June 24, 591  
2008, and ending on the date that is five years after that date. 592

(49) Sales of materials, parts, equipment, or engines used 593  
in the repair or maintenance of aircraft or avionics systems of 594  
such aircraft, and sales of repair, remodeling, replacement, or 595  
maintenance services in this state performed on aircraft or on 596  
an aircraft's avionics, engine, or component materials or parts. 597  
As used in division (B) (49) of this section, "aircraft" means 598  
aircraft of more than six thousand pounds maximum certified 599  
takeoff weight or used exclusively in general aviation. 600

(50) Sales of full flight simulators that are used for 601  
pilot or flight-crew training, sales of repair or replacement 602  
parts or components, and sales of repair or maintenance services 603  
for such full flight simulators. "Full flight simulator" means a 604  
replica of a specific type, or make, model, and series of 605  
aircraft cockpit. It includes the assemblage of equipment and 606  
computer programs necessary to represent aircraft operations in 607  
ground and flight conditions, a visual system providing an out- 608  
of-the-cockpit view, and a system that provides cues at least 609  
equivalent to those of a three-degree-of-freedom motion system, 610

and has the full range of capabilities of the systems installed 611  
in the device as described in appendices A and B of part 60 of 612  
chapter 1 of title 14 of the Code of Federal Regulations. 613

(51) Any transfer or lease of tangible personal property 614  
between the state and JobsOhio in accordance with section 615  
4313.02 of the Revised Code. 616

(52) (a) Sales to a qualifying corporation. 617

(b) As used in division (B) (52) of this section: 618

(i) "Qualifying corporation" means a nonprofit corporation 619  
organized in this state that leases from an eligible county 620  
land, buildings, structures, fixtures, and improvements to the 621  
land that are part of or used in a public recreational facility 622  
used by a major league professional athletic team or a class A 623  
to class AAA minor league affiliate of a major league 624  
professional athletic team for a significant portion of the 625  
team's home schedule, provided the following apply: 626

(I) The facility is leased from the eligible county 627  
pursuant to a lease that requires substantially all of the 628  
revenue from the operation of the business or activity conducted 629  
by the nonprofit corporation at the facility in excess of 630  
operating costs, capital expenditures, and reserves to be paid 631  
to the eligible county at least once per calendar year. 632

(II) Upon dissolution and liquidation of the nonprofit 633  
corporation, all of its net assets are distributable to the 634  
board of commissioners of the eligible county from which the 635  
corporation leases the facility. 636

(ii) "Eligible county" has the same meaning as in section 637  
307.695 of the Revised Code. 638

(53) Sales to or by a cable service provider, video 639  
service provider, or radio or television broadcast station 640  
regulated by the federal government of cable service or 641  
programming, video service or programming, audio service or 642  
programming, or electronically transferred digital audiovisual 643  
or audio work. As used in division (B) (53) of this section, 644  
"cable service" and "cable service provider" have the same 645  
meanings as in section 1332.01 of the Revised Code, and "video 646  
service," "video service provider," and "video programming" have 647  
the same meanings as in section 1332.21 of the Revised Code. 648

(54) Sales of qualifying energy star products occurring on 649  
the first Friday in April and the following Saturday and Sunday 650  
of each year. 651

As used in this division, "qualifying energy star product" 652  
means a device that carries the energy star label indicating 653  
that the device meets the energy efficiency criteria of the 654  
energy star program established by the United States department 655  
of energy and the United States environmental protection agency 656  
and that is categorized as an appliance or as heating and 657  
cooling equipment under that program. "Qualifying energy star 658  
product" does not include any device that is rented, purchased 659  
for use in a trade or business, or purchased by a person who 660  
will affix or install the device on behalf of the ultimate 661  
consumer. For the purposes of this division, a sale of a 662  
qualifying energy star product is considered to "occur" during 663  
the specified three-day period if, regardless of the date the 664  
device is delivered, the purchaser paid for the device during 665  
the specified period and did not request any delay in the 666  
shipment or delivery of the device. 667

(C) For the purpose of the proper administration of this 668

chapter, and to prevent the evasion of the tax, it is presumed 669  
that all sales made in this state are subject to the tax until 670  
the contrary is established. 671

(D) The levy of this tax on retail sales of recreation and 672  
sports club service shall not prevent a municipal corporation 673  
from levying any tax on recreation and sports club dues or on 674  
any income generated by recreation and sports club dues. 675

(E) The tax collected by the vendor from the consumer 676  
under this chapter is not part of the price, but is a tax 677  
collection for the benefit of the state, and of counties levying 678  
an additional sales tax pursuant to section 5739.021 or 5739.026 679  
of the Revised Code and of transit authorities levying an 680  
additional sales tax pursuant to section 5739.023 of the Revised 681  
Code. Except for the discount authorized under section 5739.12 682  
of the Revised Code and the effects of any rounding pursuant to 683  
section 5703.055 of the Revised Code, no person other than the 684  
state or such a county or transit authority shall derive any 685  
benefit from the collection or payment of the tax levied by this 686  
section or section 5739.021, 5739.023, or 5739.026 of the 687  
Revised Code. 688

**Sec. 5739.05.** (A) (1) The tax commissioner shall enforce 689  
and administer sections 5739.01 to 5739.31 of the Revised Code, 690  
which are hereby declared to be sections which the commissioner 691  
is required to administer within the meaning of sections 5703.17 692  
to 5703.37, 5703.39, 5703.41, and 5703.45 of the Revised Code. 693  
The commissioner may adopt and promulgate, in accordance with 694  
sections 119.01 to 119.13 of the Revised Code, such rules as the 695  
commissioner deems necessary to administer sections 5739.01 to 696  
5739.31 of the Revised Code. 697

(2) The commissioner, in accordance with section 5703.14 698



of the Revised Code, shall adopt rules necessary to implement 699  
the three-day tax exemption periods provided by division (B) (54) 700  
of section 5739.02 of the Revised Code. Before each exemption 701  
period required under that division, the commissioner shall make 702  
available to vendors informational bulletins explaining the 703  
exemption. 704

(B) Upon application, the commissioner may authorize a 705  
vendor to pay on a predetermined basis the tax levied by or 706  
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 707  
the Revised Code upon sales of things produced or distributed or 708  
services provided by such vendor, and the commissioner may waive 709  
the collection of the tax from the consumer. The commissioner 710  
shall not grant such authority unless the commissioner finds 711  
that the granting of the authority would improve compliance and 712  
increase the efficiency of the administration of the tax. The 713  
person to whom such authority is granted shall post a notice, if 714  
required by the commissioner, at the location where the product 715  
is offered for sale that the tax is included in the selling 716  
price. The commissioner may adopt rules to administer this 717  
division. 718

(C) Upon application, the commissioner may authorize a 719  
vendor to remit, on the basis of a prearranged agreement under 720  
this division, the tax levied by section 5739.02 or pursuant to 721  
section 5739.021, 5739.023, or 5739.026 of the Revised Code. The 722  
proportions and ratios in a prearranged agreement shall be 723  
determined either by a test check conducted by the commissioner 724  
under terms and conditions agreed to by the commissioner and the 725  
vendor or by any other method agreed upon by the vendor and the 726  
commissioner. If the parties are unable to agree to the terms 727  
and conditions of the test check or other method, the 728  
application shall be denied. 729

If used, the test check shall determine the proportion 730  
that taxable retail sales bear to all of the vendor's retail 731  
sales and the ratio which the tax required to be collected under 732  
sections 5739.02, 5739.021, 5739.023, and 5739.026 of the 733  
Revised Code bears to the receipts from the vendor's taxable 734  
retail sales. 735

The vendor's liability for remitting the tax shall be 736  
based solely upon the proportions and ratios established in the 737  
agreement until such time that the vendor or the commissioner 738  
believes that the nature of the vendor's business has so changed 739  
as to make the agreement no longer representative. The 740  
commissioner may give notice to the vendor at any time that the 741  
authorization is revoked or the vendor may notify the 742  
commissioner that the vendor no longer elects to report under 743  
the authorization. Such notice shall be delivered to the other 744  
party personally or by registered mail. The revocation or 745  
cancellation is effective the last day of the month in which the 746  
vendor or the commissioner receives the notice. 747

**Section 2.** That existing sections 5739.02 and 5739.05 of 748  
the Revised Code are hereby repealed. 749