

As Reported by the Senate Finance Committee

132nd General Assembly

Regular Session

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Sub. S. B. No. 224

Senator Eklund

Cosponsors: Senators Coley, Huffman, Beagle

A BILL

To amend section 5739.02 of the Revised Code to
exempt from sales and use tax goods purchased by
a foreign citizen if the goods are in Ohio only
temporarily for package consolidation before
being delivered to a foreign address, and to
declare an emergency.

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

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

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

in this state. 19

(A) (1) The tax shall be collected as provided in section 20
5739.025 of the Revised Code. The rate of the tax shall be five 21
and three-fourths per cent. The tax applies and is collectible 22
when the sale is made, regardless of the time when the price is 23
paid or delivered. 24

(2) In the case of the lease or rental, with a fixed term 25
of more than thirty days or an indefinite term with a minimum 26
period of more than thirty days, of any motor vehicles designed 27
by the manufacturer to carry a load of not more than one ton, 28
watercraft, outboard motor, or aircraft, or of any tangible 29
personal property, other than motor vehicles designed by the 30
manufacturer to carry a load of more than one ton, to be used by 31
the lessee or renter primarily for business purposes, the tax 32
shall be collected by the vendor at the time the lease or rental 33
is consummated and shall be calculated by the vendor on the 34
basis of the total amount to be paid by the lessee or renter 35
under the lease agreement. If the total amount of the 36
consideration for the lease or rental includes amounts that are 37
not calculated at the time the lease or rental is executed, the 38
tax shall be calculated and collected by the vendor at the time 39
such amounts are billed to the lessee or renter. In the case of 40
an open-end lease or rental, the tax shall be calculated by the 41
vendor on the basis of the total amount to be paid during the 42
initial fixed term of the lease or rental, and for each 43
subsequent renewal period as it comes due. As used in this 44
division, "motor vehicle" has the same meaning as in section 45
4501.01 of the Revised Code, and "watercraft" includes an 46
outdrive unit attached to the watercraft. 47

A lease with a renewal clause and a termination penalty or 48

similar provision that applies if the renewal clause is not 49
exercised is presumed to be a sham transaction. In such a case, 50
the tax shall be calculated and paid on the basis of the entire 51
length of the lease period, including any renewal periods, until 52
the termination penalty or similar provision no longer applies. 53
The taxpayer shall bear the burden, by a preponderance of the 54
evidence, that the transaction or series of transactions is not 55
a sham transaction. 56

(3) Except as provided in division (A) (2) of this section, 57
in the case of a sale, the price of which consists in whole or 58
in part of the lease or rental of tangible personal property, 59
the tax shall be measured by the installments of that lease or 60
rental. 61

(4) In the case of a sale of a physical fitness facility 62
service or recreation and sports club service, the price of 63
which consists in whole or in part of a membership for the 64
receipt of the benefit of the service, the tax applicable to the 65
sale shall be measured by the installments thereof. 66

(B) The tax does not apply to the following: 67

(1) Sales to the state or any of its political 68
subdivisions, or to any other state or its political 69
subdivisions if the laws of that state exempt from taxation 70
sales made to this state and its political subdivisions; 71

(2) Sales of food for human consumption off the premises 72
where sold; 73

(3) Sales of food sold to students only in a cafeteria, 74
dormitory, fraternity, or sorority maintained in a private, 75
public, or parochial school, college, or university; 76

(4) Sales of newspapers and sales or transfers of 77

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| magazines distributed as controlled circulation publications; | 78 |
| (5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done; | 79 80 81 82 |
| (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; | 83 84 85 86 87 88 89 90 91 92 |
| (7) Sales of natural gas by a natural gas company or municipal gas utility, 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; | 93 94 95 96 97 98 99 |
| (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; | 100 101 102 103 104 105 106 |

(9) (a) Sales of services or tangible personal property, 107
other than motor vehicles, mobile homes, and manufactured homes, 108
by churches, organizations exempt from taxation under section 109
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 110
organizations operated exclusively for charitable purposes as 111
defined in division (B) (12) of this section, provided that the 112
number of days on which such tangible personal property or 113
services, other than items never subject to the tax, are sold 114
does not exceed six in any calendar year, except as otherwise 115
provided in division (B) (9) (b) of this section. If the number of 116
days on which such sales are made exceeds six in any calendar 117
year, the church or organization shall be considered to be 118
engaged in business and all subsequent sales by it shall be 119
subject to the tax. In counting the number of days, all sales by 120
groups within a church or within an organization shall be 121
considered to be sales of that church or organization. 122

(b) The limitation on the number of days on which tax- 123
exempt sales may be made by a church or organization under 124
division (B) (9) (a) of this section does not apply to sales made 125
by student clubs and other groups of students of a primary or 126
secondary school, or a parent-teacher association, booster 127
group, or similar organization that raises money to support or 128
fund curricular or extracurricular activities of a primary or 129
secondary school. 130

(c) Divisions (B) (9) (a) and (b) of this section do not 131
apply to sales by a noncommercial educational radio or 132
television broadcasting station. 133

(10) Sales not within the taxing power of this state under 134
the Constitution or laws of the United States or the 135
Constitution of this state; 136

(11) Except for transactions that are sales under division 137
(B) (3) (r) of section 5739.01 of the Revised Code, the 138
transportation of persons or property, unless the transportation 139
is by a private investigation and security service; 140

(12) Sales of tangible personal property or services to 141
churches, to organizations exempt from taxation under section 142
501(c) (3) of the Internal Revenue Code of 1986, and to any other 143
nonprofit organizations operated exclusively for charitable 144
purposes in this state, no part of the net income of which 145
inures to the benefit of any private shareholder or individual, 146
and no substantial part of the activities of which consists of 147
carrying on propaganda or otherwise attempting to influence 148
legislation; sales to offices administering one or more homes 149
for the aged or one or more hospital facilities exempt under 150
section 140.08 of the Revised Code; and sales to organizations 151
described in division (D) of section 5709.12 of the Revised 152
Code. 153

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

specific curriculum; the operation of a parent-teacher 168
association, booster group, or similar organization primarily 169
engaged in the promotion and support of the curricular or 170
extracurricular activities of a primary or secondary school; the 171
operation of a community or area center in which presentations 172
in music, dramatics, the arts, and related fields are made in 173
order to foster public interest and education therein; the 174
production of performances in music, dramatics, and the arts; or 175
the promotion of education by an organization engaged in 176
carrying on research in, or the dissemination of, scientific and 177
technological knowledge and information primarily for the 178
public. 179

Nothing in this division shall be deemed to exempt sales 180
to any organization for use in the operation or carrying on of a 181
trade or business, or sales to a home for the aged for use in 182
the operation of independent living facilities as defined in 183
division (A) of section 5709.12 of the Revised Code. 184

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

or producing livestock; building materials and services sold to 199
a construction contractor for incorporation into a house of 200
public worship or religious education, or a building used 201
exclusively for charitable purposes under a construction 202
contract with an organization whose purpose is as described in 203
division (B) (12) of this section; building materials and 204
services sold to a construction contractor for incorporation 205
into a building under a construction contract with an 206
organization exempt from taxation under section 501(c) (3) of the 207
Internal Revenue Code of 1986 when the building is to be used 208
exclusively for the organization's exempt purposes; building and 209
construction materials sold for incorporation into the original 210
construction of a sports facility under section 307.696 of the 211
Revised Code; building and construction materials and services 212
sold to a construction contractor for incorporation into real 213
property outside this state if such materials and services, when 214
sold to a construction contractor in the state in which the real 215
property is located for incorporation into real property in that 216
state, would be exempt from a tax on sales levied by that state; 217
building and construction materials for incorporation into a 218
transportation facility pursuant to a public-private agreement 219
entered into under sections 5501.70 to 5501.83 of the Revised 220
Code; and, until one calendar year after the construction of a 221
convention center that qualifies for property tax exemption 222
under section 5709.084 of the Revised Code is completed, 223
building and construction materials and services sold to a 224
construction contractor for incorporation into the real property 225
comprising that convention center; 226

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

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| vessels or rail rolling stock; | 230 |
| (15) Sales to persons primarily engaged in any of the | 231 |
| activities mentioned in division (B) (42) (a), (g), or (h) of this | 232 |
| section, to persons engaged in making retail sales, or to | 233 |
| persons who purchase for sale from a manufacturer tangible | 234 |
| personal property that was produced by the manufacturer in | 235 |
| accordance with specific designs provided by the purchaser, of | 236 |
| packages, including material, labels, and parts for packages, | 237 |
| and of machinery, equipment, and material for use primarily in | 238 |
| packaging tangible personal property produced for sale, | 239 |
| including any machinery, equipment, and supplies used to make | 240 |
| labels or packages, to prepare packages or products for | 241 |
| labeling, or to label packages or products, by or on the order | 242 |
| of the person doing the packaging, or sold at retail. "Packages" | 243 |
| includes bags, baskets, cartons, crates, boxes, cans, bottles, | 244 |
| bindings, wrappings, and other similar devices and containers, | 245 |
| but does not include motor vehicles or bulk tanks, trailers, or | 246 |
| similar devices attached to motor vehicles. "Packaging" means | 247 |
| placing in a package. Division (B) (15) of this section does not | 248 |
| apply to persons engaged in highway transportation for hire. | 249 |
| (16) Sales of food to persons using supplemental nutrition | 250 |
| assistance program benefits to purchase the food. As used in | 251 |
| this division, "food" has the same meaning as in 7 U.S.C. 2012 | 252 |
| and federal regulations adopted pursuant to the Food and | 253 |
| Nutrition Act of 2008. | 254 |
| (17) Sales to persons engaged in farming, agriculture, | 255 |
| horticulture, or floriculture, of tangible personal property for | 256 |
| use or consumption primarily in the production by farming, | 257 |
| agriculture, horticulture, or floriculture of other tangible | 258 |
| personal property for use or consumption primarily in the | 259 |

production of tangible personal property for sale by farming, 260
agriculture, horticulture, or floriculture; or material and 261
parts for incorporation into any such tangible personal property 262
for use or consumption in production; and of tangible personal 263
property for such use or consumption in the conditioning or 264
holding of products produced by and for such use, consumption, 265
or sale by persons engaged in farming, agriculture, 266
horticulture, or floriculture, except where such property is 267
incorporated into real property; 268

(18) Sales of drugs for a human being that may be 269
dispensed only pursuant to a prescription; insulin as recognized 270
in the official United States pharmacopoeia; urine and blood 271
testing materials when used by diabetics or persons with 272
hypoglycemia to test for glucose or acetone; hypodermic syringes 273
and needles when used by diabetics for insulin injections; 274
epoetin alfa when purchased for use in the treatment of persons 275
with medical disease; hospital beds when purchased by hospitals, 276
nursing homes, or other medical facilities; and medical oxygen 277
and medical oxygen-dispensing equipment when purchased by 278
hospitals, nursing homes, or other medical facilities; 279

(19) Sales of prosthetic devices, durable medical 280
equipment for home use, or mobility enhancing equipment, when 281
made pursuant to a prescription and when such devices or 282
equipment are for use by a human being. 283

(20) Sales of emergency and fire protection vehicles and 284
equipment to nonprofit organizations for use solely in providing 285
fire protection and emergency services, including trauma care 286
and emergency medical services, for political subdivisions of 287
the state; 288

(21) Sales of tangible personal property manufactured in 289

this state, if sold by the manufacturer in this state to a 290
retailer for use in the retail business of the retailer outside 291
of this state and if possession is taken from the manufacturer 292
by the purchaser within this state for the sole purpose of 293
immediately removing the same from this state in a vehicle owned 294
by the purchaser; 295

(22) Sales of services provided by the state or any of its 296
political subdivisions, agencies, instrumentalities, 297
institutions, or authorities, or by governmental entities of the 298
state or any of its political subdivisions, agencies, 299
instrumentalities, institutions, or authorities; 300

(23) Sales of motor vehicles to nonresidents of this state 301
under the circumstances described in division (B) of section 302
5739.029 of the Revised Code; 303

(24) Sales to persons engaged in the preparation of eggs 304
for sale of tangible personal property used or consumed directly 305
in such preparation, including such tangible personal property 306
used for cleaning, sanitizing, preserving, grading, sorting, and 307
classifying by size; packages, including material and parts for 308
packages, and machinery, equipment, and material for use in 309
packaging eggs for sale; and handling and transportation 310
equipment and parts therefor, except motor vehicles licensed to 311
operate on public highways, used in intraplant or interplant 312
transfers or shipment of eggs in the process of preparation for 313
sale, when the plant or plants within or between which such 314
transfers or shipments occur are operated by the same person. 315
"Packages" includes containers, cases, baskets, flats, fillers, 316
filler flats, cartons, closure materials, labels, and labeling 317
materials, and "packaging" means placing therein. 318

(25) (a) Sales of water to a consumer for residential use; 319

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| (b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing. | 320 321 322 323 |
| (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code; | 324 325 |
| (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: | 326 327 328 329 |
| (a) To prepare food for human consumption for sale; | 330 |
| (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; | 331 332 333 334 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale. | 335 336 |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies; | 337 338 |
| (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; | 339 340 341 342 |
| (30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code; | 343 344 345 |
| (31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the | 346 347 |

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| Revised Code; | 348 |
| (32) The sale, lease, repair, and maintenance of, parts | 349 |
| for, or items attached to or incorporated in, motor vehicles | 350 |
| that are primarily used for transporting tangible personal | 351 |
| property belonging to others by a person engaged in highway | 352 |
| transportation for hire, except for packages and packaging used | 353 |
| for the transportation of tangible personal property; | 354 |
| (33) Sales to the state headquarters of any veterans' | 355 |
| organization in this state that is either incorporated and | 356 |
| issued a charter by the congress of the United States or is | 357 |
| recognized by the United States veterans administration, for use | 358 |
| by the headquarters; | 359 |
| (34) Sales to a telecommunications service vendor, mobile | 360 |
| telecommunications service vendor, or satellite broadcasting | 361 |
| service vendor of tangible personal property and services used | 362 |
| directly and primarily in transmitting, receiving, switching, or | 363 |
| recording any interactive, one- or two-way electromagnetic | 364 |
| communications, including voice, image, data, and information, | 365 |
| through the use of any medium, including, but not limited to, | 366 |
| poles, wires, cables, switching equipment, computers, and record | 367 |
| storage devices and media, and component parts for the tangible | 368 |
| personal property. The exemption provided in this division shall | 369 |
| be in lieu of all other exemptions under division (B) (42) (a) or | 370 |
| (n) of this section to which the vendor may otherwise be | 371 |
| entitled, based upon the use of the thing purchased in providing | 372 |
| the telecommunications, mobile telecommunications, or satellite | 373 |
| broadcasting service. | 374 |
| (35) (a) Sales where the purpose of the consumer is to use | 375 |
| or consume the things transferred in making retail sales and | 376 |
| consisting of newspaper inserts, catalogues, coupons, flyers, | 377 |

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

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| computer keyboards, modems, and other peripheral computer | 407 |
| equipment to an individual who is licensed or certified to teach | 408 |
| in an elementary or a secondary school in this state for use by | 409 |
| that individual in preparation for teaching elementary or | 410 |
| secondary school students; | 411 |
| (38) Sales to a professional racing team of any of the | 412 |
| following: | 413 |
| (a) Motor racing vehicles; | 414 |
| (b) Repair services for motor racing vehicles; | 415 |
| (c) Items of property that are attached to or incorporated | 416 |
| in motor racing vehicles, including engines, chassis, and all | 417 |
| other components of the vehicles, and all spare, replacement, | 418 |
| and rebuilt parts or components of the vehicles; except not | 419 |
| including tires, consumable fluids, paint, and accessories | 420 |
| consisting of instrumentation sensors and related items added to | 421 |
| the vehicle to collect and transmit data by means of telemetry | 422 |
| and other forms of communication. | 423 |
| (39) Sales of used manufactured homes and used mobile | 424 |
| homes, as defined in section 5739.0210 of the Revised Code, made | 425 |
| on or after January 1, 2000; | 426 |
| (40) Sales of tangible personal property and services to a | 427 |
| provider of electricity used or consumed directly and primarily | 428 |
| in generating, transmitting, or distributing electricity for use | 429 |
| by others, including property that is or is to be incorporated | 430 |
| into and will become a part of the consumer's production, | 431 |
| transmission, or distribution system and that retains its | 432 |
| classification as tangible personal property after | 433 |
| incorporation; fuel or power used in the production, | 434 |
| transmission, or distribution of electricity; energy conversion | 435 |

equipment as defined in section 5727.01 of the Revised Code; and 436
tangible personal property and services used in the repair and 437
maintenance of the production, transmission, or distribution 438
system, including only those motor vehicles as are specially 439
designed and equipped for such use. The exemption provided in 440
this division shall be in lieu of all other exemptions in 441
division (B) (42) (a) or (n) of this section to which a provider 442
of electricity may otherwise be entitled based on the use of the 443
tangible personal property or service purchased in generating, 444
transmitting, or distributing electricity. 445

(41) Sales to a person providing services under division 446
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 447
personal property and services used directly and primarily in 448
providing taxable services under that section. 449

(42) Sales where the purpose of the purchaser is to do any 450
of the following: 451

(a) To incorporate the thing transferred as a material or 452
a part into tangible personal property to be produced for sale 453
by manufacturing, assembling, processing, or refining; or to use 454
or consume the thing transferred directly in producing tangible 455
personal property for sale by mining, including, without 456
limitation, the extraction from the earth of all substances that 457
are classed geologically as minerals, production of crude oil 458
and natural gas, or directly in the rendition of a public 459
utility service, except that the sales tax levied by this 460
section shall be collected upon all meals, drinks, and food for 461
human consumption sold when transporting persons. Persons 462
engaged in rendering services in the exploration for, and 463
production of, crude oil and natural gas for others are deemed 464
engaged directly in the exploration for, and production of, 465

crude oil and natural gas. This paragraph does not exempt from 466
"retail sale" or "sales at retail" the sale of tangible personal 467
property that is to be incorporated into a structure or 468
improvement to real property. 469

(b) To hold the thing transferred as security for the 470
performance of an obligation of the vendor; 471

(c) To resell, hold, use, or consume the thing transferred 472
as evidence of a contract of insurance; 473

(d) To use or consume the thing directly in commercial 474
fishing; 475

(e) To incorporate the thing transferred as a material or 476
a part into, or to use or consume the thing transferred directly 477
in the production of, magazines distributed as controlled 478
circulation publications; 479

(f) To use or consume the thing transferred in the 480
production and preparation in suitable condition for market and 481
sale of printed, imprinted, overprinted, lithographic, 482
multilithic, blueprinted, photostatic, or other productions or 483
reproductions of written or graphic matter; 484

(g) To use the thing transferred, as described in section 485
5739.011 of the Revised Code, primarily in a manufacturing 486
operation to produce tangible personal property for sale; 487

(h) To use the benefit of a warranty, maintenance or 488
service contract, or similar agreement, as described in division 489
(B) (7) of section 5739.01 of the Revised Code, to repair or 490
maintain tangible personal property, if all of the property that 491
is the subject of the warranty, contract, or agreement would not 492
be subject to the tax imposed by this section; 493

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| (i) To use the thing transferred as qualified research and development equipment; | 494 495 |
| (j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B) (35) of this section. | 496 497 498 499 500 501 502 503 504 505 506 507 508 |
| (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; | 509 510 511 512 513 514 515 |
| (l) To use or consume the thing transferred in the production of a newspaper for distribution to the public; | 516 517 |
| (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; | 518 519 520 521 522 |

(n) To use or consume the thing transferred primarily in 523
producing tangible personal property for sale by farming, 524
agriculture, horticulture, or floriculture. Persons engaged in 525
rendering farming, agriculture, horticulture, or floriculture 526
services for others are deemed engaged primarily in farming, 527
agriculture, horticulture, or floriculture. This paragraph does 528
not exempt from "retail sale" or "sales at retail" the sale of 529
tangible personal property that is to be incorporated into a 530
structure or improvement to real property. 531

(o) To use or consume the thing transferred in acquiring, 532
formatting, editing, storing, and disseminating data or 533
information by electronic publishing; 534

(p) To provide the thing transferred to the owner or 535
lessee of a motor vehicle that is being repaired or serviced, if 536
the thing transferred is a rented motor vehicle and the 537
purchaser is reimbursed for the cost of the rented motor vehicle 538
by a manufacturer, warrantor, or provider of a maintenance, 539
service, or other similar contract or agreement, with respect to 540
the motor vehicle that is being repaired or serviced. 541

As used in division (B) (42) of this section, "thing" 542
includes all transactions included in divisions (B) (3) (a), (b), 543
and (e) of section 5739.01 of the Revised Code. 544

(43) Sales conducted through a coin operated device that 545
activates vacuum equipment or equipment that dispenses water, 546
whether or not in combination with soap or other cleaning agents 547
or wax, to the consumer for the consumer's use on the premises 548
in washing, cleaning, or waxing a motor vehicle, provided no 549
other personal property or personal service is provided as part 550
of the transaction. 551

(44) Sales of replacement and modification parts for 552
engines, airframes, instruments, and interiors in, and paint 553
for, aircraft used primarily in a fractional aircraft ownership 554
program, and sales of services for the repair, modification, and 555
maintenance of such aircraft, and machinery, equipment, and 556
supplies primarily used to provide those services. 557

(45) Sales of telecommunications service that is used 558
directly and primarily to perform the functions of a call 559
center. As used in this division, "call center" means any 560
physical location where telephone calls are placed or received 561
in high volume for the purpose of making sales, marketing, 562
customer service, technical support, or other specialized 563
business activity, and that employs at least fifty individuals 564
that engage in call center activities on a full-time basis, or 565
sufficient individuals to fill fifty full-time equivalent 566
positions. 567

(46) Sales by a telecommunications service vendor of 900 568
service to a subscriber. This division does not apply to 569
information services, as defined in division (FF) of section 570
5739.01 of the Revised Code. 571

(47) Sales of value-added non-voice data service. This 572
division does not apply to any similar service that is not 573
otherwise a telecommunications service. 574

(48) (a) Sales of machinery, equipment, and software to a 575
qualified direct selling entity for use in a warehouse or 576
distribution center primarily for storing, transporting, or 577
otherwise handling inventory that is held for sale to 578
independent salespersons who operate as direct sellers and that 579
is held primarily for distribution outside this state; 580

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| (b) As used in division (B) (48) (a) of this section: | 581 |
| (i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling. | 582 583 584 585 586 |
| (ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B) (48) of this section after execution of the tax credit agreement by the tax credit authority. | 587 588 589 590 591 592 593 594 595 596 |
| (c) Division (B) (48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date. | 597 598 599 600 |
| (49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B) (49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation. | 601 602 603 604 605 606 607 608 |
| (50) Sales of full flight simulators that are used for | 609 |

pilot or flight-crew training, sales of repair or replacement 610
parts or components, and sales of repair or maintenance services 611
for such full flight simulators. "Full flight simulator" means a 612
replica of a specific type, or make, model, and series of 613
aircraft cockpit. It includes the assemblage of equipment and 614
computer programs necessary to represent aircraft operations in 615
ground and flight conditions, a visual system providing an out- 616
of-the-cockpit view, and a system that provides cues at least 617
equivalent to those of a three-degree-of-freedom motion system, 618
and has the full range of capabilities of the systems installed 619
in the device as described in appendices A and B of part 60 of 620
chapter 1 of title 14 of the Code of Federal Regulations. 621

(51) Any transfer or lease of tangible personal property 622
between the state and JobsOhio in accordance with section 623
4313.02 of the Revised Code. 624

(52) (a) Sales to a qualifying corporation. 625

(b) As used in division (B) (52) of this section: 626

(i) "Qualifying corporation" means a nonprofit corporation 627
organized in this state that leases from an eligible county 628
land, buildings, structures, fixtures, and improvements to the 629
land that are part of or used in a public recreational facility 630
used by a major league professional athletic team or a class A 631
to class AAA minor league affiliate of a major league 632
professional athletic team for a significant portion of the 633
team's home schedule, provided the following apply: 634

(I) The facility is leased from the eligible county 635
pursuant to a lease that requires substantially all of the 636
revenue from the operation of the business or activity conducted 637
by the nonprofit corporation at the facility in excess of 638

operating costs, capital expenditures, and reserves to be paid 639
to the eligible county at least once per calendar year. 640

(II) Upon dissolution and liquidation of the nonprofit 641
corporation, all of its net assets are distributable to the 642
board of commissioners of the eligible county from which the 643
corporation leases the facility. 644

(ii) "Eligible county" has the same meaning as in section 645
307.695 of the Revised Code. 646

(53) Sales to or by a cable service provider, video 647
service provider, or radio or television broadcast station 648
regulated by the federal government of cable service or 649
programming, video service or programming, audio service or 650
programming, or electronically transferred digital audiovisual 651
or audio work. As used in division (B) (53) of this section, 652
"cable service" and "cable service provider" have the same 653
meanings as in section 1332.01 of the Revised Code, and "video 654
service," "video service provider," and "video programming" have 655
the same meanings as in section 1332.21 of the Revised Code. 656

(54) Sales of investment metal bullion and investment 657
coins. "Investment metal bullion" means any bullion described in 658
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 659
whether that bullion is in the physical possession of a trustee. 660
"Investment coin" means any coin composed primarily of gold, 661
silver, platinum, or palladium. 662

(55) Sales of a digital audio work electronically 663
transferred for delivery through use of a machine, such as a 664
juke box, that does all of the following: 665

(a) Accepts direct payments to operate; 666

(b) Automatically plays a selected digital audio work for 667

a single play upon receipt of a payment described in division 668
(B) (55) (a) of this section; 669

(c) Operates exclusively for the purpose of playing 670
digital audio works in a commercial establishment. 671

(56) Sales of tangible personal property that is not 672
required to be registered or licensed under the laws of this 673
state to a citizen of a foreign nation that is not a citizen of 674
the United States, provided the property is delivered to a 675
person in this state that is not a related member of the 676
purchaser, is physically present in this state for the sole 677
purpose of temporary storage and package consolidation, and is 678
subsequently delivered to the purchaser at a delivery address in 679
a foreign nation. As used in division (B) (56) of this section, 680
"related member" has the same meaning as in section 5733.042 of 681
the Revised Code, and "temporary storage" means the storage of 682
tangible personal property for a period of not more than sixty 683
days. 684

(C) For the purpose of the proper administration of this 685
chapter, and to prevent the evasion of the tax, it is presumed 686
that all sales made in this state are subject to the tax until 687
the contrary is established. 688

(D) The levy of this tax on retail sales of recreation and 689
sports club service shall not prevent a municipal corporation 690
from levying any tax on recreation and sports club dues or on 691
any income generated by recreation and sports club dues. 692

(E) The tax collected by the vendor from the consumer 693
under this chapter is not part of the price, but is a tax 694
collection for the benefit of the state, and of counties levying 695
an additional sales tax pursuant to section 5739.021 or 5739.026 696

of the Revised Code and of transit authorities levying an 697
additional sales tax pursuant to section 5739.023 of the Revised 698
Code. Except for the discount authorized under section 5739.12 699
of the Revised Code and the effects of any rounding pursuant to 700
section 5703.055 of the Revised Code, no person other than the 701
state or such a county or transit authority shall derive any 702
benefit from the collection or payment of the tax levied by this 703
section or section 5739.021, 5739.023, or 5739.026 of the 704
Revised Code. 705

Section 2. That existing section 5739.02 of the Revised 706
Code is hereby repealed. 707

Section 3. The amendment by this act of section 5739.02 of 708
the Revised Code applies on and after October 1, 2017. 709

Section 4. Pursuant to division (G) of section 5703.95 of 710
the Revised Code, which states that any bill introduced in the 711
House of Representatives or the Senate that proposes to enact or 712
modify one or more tax expenditures should include a statement 713
explaining the objectives of the tax expenditure or its 714
modification and the sponsor's intent in proposing the tax 715
expenditure or its modification: 716

The purpose of the exemption enacted by this act is to 717
eliminate the imposition of sales taxes on transactions that 718
bear no relation to Ohio, the imposition of which is 719
demonstrably directing interstate commerce to other states that 720
do not impose sales taxes on such transactions. 721

Section 5. This act is hereby declared to be an emergency 722
measure necessary for the immediate preservation of the public 723
peace, health, and safety. The reason for such necessity is to 724
prevent business closures that are imminent because of loss of 725

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| business to competitors in states that do not impose sales taxes | 726 |
| on transactions exempted by the act. Therefore, this act shall | 727 |
| go into immediate effect. | 728 |