

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 114

Senator Antani

A BILL

To amend sections 5739.02 and 5739.03 of the 1
Revised Code to exempt from sales and use tax 2
the sale of child and adult diapers. 3

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

Section 1. That sections 5739.02 and 5739.03 of the 4
Revised Code be amended to read as follows: 5

Sec. 5739.02. For the purpose of providing revenue with 6
which to meet the needs of the state, for the use of the general 7
revenue fund of the state, for the purpose of securing a 8
thorough and efficient system of common schools throughout the 9
state, for the purpose of affording revenues, in addition to 10
those from general property taxes, permitted under 11
constitutional limitations, and from other sources, for the 12
support of local governmental functions, and for the purpose of 13
reimbursing the state for the expense of administering this 14
chapter, an excise tax is hereby levied on each retail sale made 15
in this state. 16

(A) (1) The tax shall be collected as provided in section 17
5739.025 of the Revised Code. The rate of the tax shall be five 18
and three-fourths per cent. The tax applies and is collectible 19

when the sale is made, regardless of the time when the price is 20
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term 22
of more than thirty days or an indefinite term with a minimum 23
period of more than thirty days, of any motor vehicles designed 24
by the manufacturer to carry a load of not more than one ton, 25
watercraft, outboard motor, or aircraft, or of any tangible 26
personal property, other than motor vehicles designed by the 27
manufacturer to carry a load of more than one ton, to be used by 28
the lessee or renter primarily for business purposes, the tax 29
shall be collected by the vendor at the time the lease or rental 30
is consummated and shall be calculated by the vendor on the 31
basis of the total amount to be paid by the lessee or renter 32
under the lease agreement. If the total amount of the 33
consideration for the lease or rental includes amounts that are 34
not calculated at the time the lease or rental is executed, the 35
tax shall be calculated and collected by the vendor at the time 36
such amounts are billed to the lessee or renter. In the case of 37
an open-end lease or rental, the tax shall be calculated by the 38
vendor on the basis of the total amount to be paid during the 39
initial fixed term of the lease or rental, and for each 40
subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an 43
outdrive unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45
similar provision that applies if the renewal clause is not 46
exercised is presumed to be a sham transaction. In such a case, 47
the tax shall be calculated and paid on the basis of the entire 48
length of the lease period, including any renewal periods, until 49
the termination penalty or similar provision no longer applies. 50

The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

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

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

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

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

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

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

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

(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
(6) (a) Sales of motor fuel upon receipt, use,	80
distribution, or sale of which in this state a tax is imposed by	81
the law of this state, but this exemption shall not apply to the	82
sale of motor fuel on which a refund of the tax is allowable	83
under division (A) of section 5735.14 of the Revised Code; and	84
the tax commissioner may deduct the amount of tax levied by this	85
section applicable to the price of motor fuel when granting a	86
refund of motor fuel tax pursuant to division (A) of section	87
5735.14 of the Revised Code and shall cause the amount deducted	88
to be paid into the general revenue fund of this state;	89
(b) Sales of motor fuel other than that described in	90
division (B) (6) (a) of this section and used for powering a	91
refrigeration unit on a vehicle other than one used primarily to	92
provide comfort to the operator or occupants of the vehicle.	93
(7) Sales of natural gas by a natural gas company or	94
municipal gas utility, of water by a water-works company, or of	95
steam by a heating company, if in each case the thing sold is	96
delivered to consumers through pipes or conduits, and all sales	97
of communications services by a telegraph company, all terms as	98
defined in section 5727.01 of the Revised Code, and sales of	99
electricity delivered through wires;	100
(8) Casual sales by a person, or auctioneer employed	101
directly by the person to conduct such sales, except as to such	102
sales of motor vehicles, watercraft or outboard motors required	103
to be titled under section 1548.06 of the Revised Code,	104
watercraft documented with the United States coast guard,	105
snowmobiles, and all-purpose vehicles as defined in section	106
4519.01 of the Revised Code;	107

(9) (a) Sales of services or tangible personal property, 108
other than motor vehicles, mobile homes, and manufactured homes, 109
by churches, organizations exempt from taxation under section 110
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 111
organizations operated exclusively for charitable purposes as 112
defined in division (B) (12) of this section, provided that the 113
number of days on which such tangible personal property or 114
services, other than items never subject to the tax, are sold 115
does not exceed six in any calendar year, except as otherwise 116
provided in division (B) (9) (b) of this section. If the number of 117
days on which such sales are made exceeds six in any calendar 118
year, the church or organization shall be considered to be 119
engaged in business and all subsequent sales by it shall be 120
subject to the tax. In counting the number of days, all sales by 121
groups within a church or within an organization shall be 122
considered to be sales of that church or organization. 123

(b) The limitation on the number of days on which tax- 124
exempt sales may be made by a church or organization under 125
division (B) (9) (a) of this section does not apply to sales made 126
by student clubs and other groups of students of a primary or 127
secondary school, or a parent-teacher association, booster 128
group, or similar organization that raises money to support or 129
fund curricular or extracurricular activities of a primary or 130
secondary school. 131

(c) Divisions (B) (9) (a) and (b) of this section do not 132
apply to sales by a noncommercial educational radio or 133
television broadcasting station. 134

(10) Sales not within the taxing power of this state under 135
the Constitution or laws of the United States or the 136
Constitution of this state; 137

(11) Except for transactions that are sales under division 138
(B) (3) (r) of section 5739.01 of the Revised Code, the 139
transportation of persons or property, unless the transportation 140
is by a private investigation and security service; 141

(12) Sales of tangible personal property or services to 142
churches, to organizations exempt from taxation under section 143
501(c) (3) of the Internal Revenue Code of 1986, and to any other 144
nonprofit organizations operated exclusively for charitable 145
purposes in this state, no part of the net income of which 146
inures to the benefit of any private shareholder or individual, 147
and no substantial part of the activities of which consists of 148
carrying on propaganda or otherwise attempting to influence 149
legislation; sales to offices administering one or more homes 150
for the aged or one or more hospital facilities exempt under 151
section 140.08 of the Revised Code; and sales to organizations 152
described in division (D) of section 5709.12 of the Revised 153
Code. 154

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

specific curriculum; the operation of a parent-teacher 169
association, booster group, or similar organization primarily 170
engaged in the promotion and support of the curricular or 171
extracurricular activities of a primary or secondary school; the 172
operation of a community or area center in which presentations 173
in music, dramatics, the arts, and related fields are made in 174
order to foster public interest and education therein; the 175
production of performances in music, dramatics, and the arts; or 176
the promotion of education by an organization engaged in 177
carrying on research in, or the dissemination of, scientific and 178
technological knowledge and information primarily for the 179
public. 180

Nothing in this division shall be deemed to exempt sales 181
to any organization for use in the operation or carrying on of a 182
trade or business, or sales to a home for the aged for use in 183
the operation of independent living facilities as defined in 184
division (A) of section 5709.12 of the Revised Code. 185

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

or producing livestock; building materials and services sold to 200
a construction contractor for incorporation into a house of 201
public worship or religious education, or a building used 202
exclusively for charitable purposes under a construction 203
contract with an organization whose purpose is as described in 204
division (B) (12) of this section; building materials and 205
services sold to a construction contractor for incorporation 206
into a building under a construction contract with an 207
organization exempt from taxation under section 501(c) (3) of the 208
Internal Revenue Code of 1986 when the building is to be used 209
exclusively for the organization's exempt purposes; building and 210
construction materials sold for incorporation into the original 211
construction of a sports facility under section 307.696 of the 212
Revised Code; building and construction materials and services 213
sold to a construction contractor for incorporation into real 214
property outside this state if such materials and services, when 215
sold to a construction contractor in the state in which the real 216
property is located for incorporation into real property in that 217
state, would be exempt from a tax on sales levied by that state; 218
building and construction materials for incorporation into a 219
transportation facility pursuant to a public-private agreement 220
entered into under sections 5501.70 to 5501.83 of the Revised 221
Code; and, until one calendar year after the construction of a 222
convention center that qualifies for property tax exemption 223
under section 5709.084 of the Revised Code is completed, 224
building and construction materials and services sold to a 225
construction contractor for incorporation into the real property 226
comprising that convention center; 227

(14) Sales of ships or vessels or rail rolling stock used 228
or to be used principally in interstate or foreign commerce, and 229
repairs, alterations, fuel, and lubricants for such ships or 230

vessels or rail rolling stock;	231
(15) Sales to persons primarily engaged in any of the	232
activities mentioned in division (B) (42) (a), (g), or (h) of this	233
section, to persons engaged in making retail sales, or to	234
persons who purchase for sale from a manufacturer tangible	235
personal property that was produced by the manufacturer in	236
accordance with specific designs provided by the purchaser, of	237
packages, including material, labels, and parts for packages,	238
and of machinery, equipment, and material for use primarily in	239
packaging tangible personal property produced for sale,	240
including any machinery, equipment, and supplies used to make	241
labels or packages, to prepare packages or products for	242
labeling, or to label packages or products, by or on the order	243
of the person doing the packaging, or sold at retail. "Packages"	244
includes bags, baskets, cartons, crates, boxes, cans, bottles,	245
bindings, wrappings, and other similar devices and containers,	246
but does not include motor vehicles or bulk tanks, trailers, or	247
similar devices attached to motor vehicles. "Packaging" means	248
placing in a package. Division (B) (15) of this section does not	249
apply to persons engaged in highway transportation for hire.	250
(16) Sales of food to persons using supplemental nutrition	251
assistance program benefits to purchase the food. As used in	252
this division, "food" has the same meaning as in 7 U.S.C. 2012	253
and federal regulations adopted pursuant to the Food and	254
Nutrition Act of 2008.	255
(17) Sales to persons engaged in farming, agriculture,	256
horticulture, or floriculture, of tangible personal property for	257
use or consumption primarily in the production by farming,	258
agriculture, horticulture, or floriculture of other tangible	259
personal property for use or consumption primarily in the	260

production of tangible personal property for sale by farming, 261
agriculture, horticulture, or floriculture; or material and 262
parts for incorporation into any such tangible personal property 263
for use or consumption in production; and of tangible personal 264
property for such use or consumption in the conditioning or 265
holding of products produced by and for such use, consumption, 266
or sale by persons engaged in farming, agriculture, 267
horticulture, or floriculture, except where such property is 268
incorporated into real property; 269

(18) Sales of drugs for a human being that may be 270
dispensed only pursuant to a prescription; insulin as recognized 271
in the official United States pharmacopoeia; urine and blood 272
testing materials when used by diabetics or persons with 273
hypoglycemia to test for glucose or acetone; hypodermic syringes 274
and needles when used by diabetics for insulin injections; 275
epoetin alfa when purchased for use in the treatment of persons 276
with medical disease; hospital beds when purchased by hospitals, 277
nursing homes, or other medical facilities; and medical oxygen 278
and medical oxygen-dispensing equipment when purchased by 279
hospitals, nursing homes, or other medical facilities; 280

(19) Sales of prosthetic devices, durable medical 281
equipment for home use, or mobility enhancing equipment, when 282
made pursuant to a prescription and when such devices or 283
equipment are for use by a human being. 284

(20) Sales of emergency and fire protection vehicles and 285
equipment to nonprofit organizations for use solely in providing 286
fire protection and emergency services, including trauma care 287
and emergency medical services, for political subdivisions of 288
the state; 289

(21) Sales of tangible personal property manufactured in 290

this state, if sold by the manufacturer in this state to a 291
retailer for use in the retail business of the retailer outside 292
of this state and if possession is taken from the manufacturer 293
by the purchaser within this state for the sole purpose of 294
immediately removing the same from this state in a vehicle owned 295
by the purchaser; 296

(22) Sales of services provided by the state or any of its 297
political subdivisions, agencies, instrumentalities, 298
institutions, or authorities, or by governmental entities of the 299
state or any of its political subdivisions, agencies, 300
instrumentalities, institutions, or authorities; 301

(23) Sales of motor vehicles to nonresidents of this state 302
under the circumstances described in division (B) of section 303
5739.029 of the Revised Code; 304

(24) Sales to persons engaged in the preparation of eggs 305
for sale of tangible personal property used or consumed directly 306
in such preparation, including such tangible personal property 307
used for cleaning, sanitizing, preserving, grading, sorting, and 308
classifying by size; packages, including material and parts for 309
packages, and machinery, equipment, and material for use in 310
packaging eggs for sale; and handling and transportation 311
equipment and parts therefor, except motor vehicles licensed to 312
operate on public highways, used in intraplant or interplant 313
transfers or shipment of eggs in the process of preparation for 314
sale, when the plant or plants within or between which such 315
transfers or shipments occur are operated by the same person. 316
"Packages" includes containers, cases, baskets, flats, fillers, 317
filler flats, cartons, closure materials, labels, and labeling 318
materials, and "packaging" means placing therein. 319

(25) (a) Sales of water to a consumer for residential use; 320

(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.	321 322 323 324
(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	325 326
(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:	327 328 329 330
(a) To prepare food for human consumption for sale;	331
(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;	332 333 334 335
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	336 337
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	338 339
(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;	340 341 342 343
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	344 345 346
(31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the	347 348

Revised Code;	349
(32) The sale, lease, repair, and maintenance of, parts	350
for, or items attached to or incorporated in, motor vehicles	351
that are primarily used for transporting tangible personal	352
property belonging to others by a person engaged in highway	353
transportation for hire, except for packages and packaging used	354
for the transportation of tangible personal property;	355
(33) Sales to the state headquarters of any veterans'	356
organization in this state that is either incorporated and	357
issued a charter by the congress of the United States or is	358
recognized by the United States veterans administration, for use	359
by the headquarters;	360
(34) Sales to a telecommunications service vendor, mobile	361
telecommunications service vendor, or satellite broadcasting	362
service vendor of tangible personal property and services used	363
directly and primarily in transmitting, receiving, switching, or	364
recording any interactive, one- or two-way electromagnetic	365
communications, including voice, image, data, and information,	366
through the use of any medium, including, but not limited to,	367
poles, wires, cables, switching equipment, computers, and record	368
storage devices and media, and component parts for the tangible	369
personal property. The exemption provided in this division shall	370
be in lieu of all other exemptions under division (B) (42) (a) or	371
(n) of this section to which the vendor may otherwise be	372
entitled, based upon the use of the thing purchased in providing	373
the telecommunications, mobile telecommunications, or satellite	374
broadcasting service.	375
(35) (a) Sales where the purpose of the consumer is to use	376
or consume the things transferred in making retail sales and	377
consisting of newspaper inserts, catalogues, coupons, flyers,	378

gift certificates, or other advertising material that prices and	379
describes tangible personal property offered for retail sale.	380
(b) Sales to direct marketing vendors of preliminary	381
materials such as photographs, artwork, and typesetting that	382
will be used in printing advertising material; and of printed	383
matter that offers free merchandise or chances to win sweepstake	384
prizes and that is mailed to potential customers with	385
advertising material described in division (B) (35) (a) of this	386
section;	387
(c) Sales of equipment such as telephones, computers,	388
facsimile machines, and similar tangible personal property	389
primarily used to accept orders for direct marketing retail	390
sales.	391
(d) Sales of automatic food vending machines that preserve	392
food with a shelf life of forty-five days or less by	393
refrigeration and dispense it to the consumer.	394
For purposes of division (B) (35) of this section, "direct	395
marketing" means the method of selling where consumers order	396
tangible personal property by United States mail, delivery	397
service, or telecommunication and the vendor delivers or ships	398
the tangible personal property sold to the consumer from a	399
warehouse, catalogue distribution center, or similar fulfillment	400
facility by means of the United States mail, delivery service,	401
or common carrier.	402
(36) Sales to a person engaged in the business of	403
horticulture or producing livestock of materials to be	404
incorporated into a horticulture structure or livestock	405
structure;	406
(37) Sales of personal computers, computer monitors,	407

computer keyboards, modems, and other peripheral computer 408
equipment to an individual who is licensed or certified to teach 409
in an elementary or a secondary school in this state for use by 410
that individual in preparation for teaching elementary or 411
secondary school students; 412

(38) Sales of tangible personal property that is not 413
required to be registered or licensed under the laws of this 414
state to a citizen of a foreign nation that is not a citizen of 415
the United States, provided the property is delivered to a 416
person in this state that is not a related member of the 417
purchaser, is physically present in this state for the sole 418
purpose of temporary storage and package consolidation, and is 419
subsequently delivered to the purchaser at a delivery address in 420
a foreign nation. As used in division (B)(38) of this section, 421
"related member" has the same meaning as in section 5733.042 of 422
the Revised Code, and "temporary storage" means the storage of 423
tangible personal property for a period of not more than sixty 424
days. 425

(39) Sales of used manufactured homes and used mobile 426
homes, as defined in section 5739.0210 of the Revised Code, made 427
on or after January 1, 2000; 428

(40) Sales of tangible personal property and services to a 429
provider of electricity used or consumed directly and primarily 430
in generating, transmitting, or distributing electricity for use 431
by others, including property that is or is to be incorporated 432
into and will become a part of the consumer's production, 433
transmission, or distribution system and that retains its 434
classification as tangible personal property after 435
incorporation; fuel or power used in the production, 436
transmission, or distribution of electricity; energy conversion 437

equipment as defined in section 5727.01 of the Revised Code; and 438
tangible personal property and services used in the repair and 439
maintenance of the production, transmission, or distribution 440
system, including only those motor vehicles as are specially 441
designed and equipped for such use. The exemption provided in 442
this division shall be in lieu of all other exemptions in 443
division (B) (42) (a) or (n) of this section to which a provider 444
of electricity may otherwise be entitled based on the use of the 445
tangible personal property or service purchased in generating, 446
transmitting, or distributing electricity. 447

(41) Sales to a person providing services under division 448
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 449
personal property and services used directly and primarily in 450
providing taxable services under that section. 451

(42) Sales where the purpose of the purchaser is to do any 452
of the following: 453

(a) To incorporate the thing transferred as a material or 454
a part into tangible personal property to be produced for sale 455
by manufacturing, assembling, processing, or refining; or to use 456
or consume the thing transferred directly in producing tangible 457
personal property for sale by mining, including, without 458
limitation, the extraction from the earth of all substances that 459
are classed geologically as minerals, or directly in the 460
rendition of a public utility service, except that the sales tax 461
levied by this section shall be collected upon all meals, 462
drinks, and food for human consumption sold when transporting 463
persons. This paragraph does not exempt from "retail sale" or 464
"sales at retail" the sale of tangible personal property that is 465
to be incorporated into a structure or improvement to real 466
property. 467

(b) To hold the thing transferred as security for the performance of an obligation of the vendor;	468 469
(c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;	470 471
(d) To use or consume the thing directly in commercial fishing;	472 473
(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;	474 475 476 477
(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;	478 479 480 481 482
(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;	483 484 485
(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;	486 487 488 489 490 491
(i) To use the thing transferred as qualified research and development equipment;	492 493
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased	494 495

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

(k) To use or consume the thing transferred to fulfill a 507
contractual obligation incurred by a warrantor pursuant to a 508
warranty provided as a part of the price of the tangible 509
personal property sold or by a vendor of a warranty, maintenance 510
or service contract, or similar agreement the provision of which 511
is defined as a sale under division (B) (7) of section 5739.01 of 512
the Revised Code; 513

(l) To use or consume the thing transferred in the 514
production of a newspaper for distribution to the public; 515

(m) To use tangible personal property to perform a service 516
listed in division (B) (3) of section 5739.01 of the Revised 517
Code, if the property is or is to be permanently transferred to 518
the consumer of the service as an integral part of the 519
performance of the service; 520

(n) To use or consume the thing transferred primarily in 521
producing tangible personal property for sale by farming, 522
agriculture, horticulture, or floriculture. Persons engaged in 523
rendering farming, agriculture, horticulture, or floriculture 524
services for others are deemed engaged primarily in farming, 525

agriculture, horticulture, or floriculture. This paragraph does 526
not exempt from "retail sale" or "sales at retail" the sale of 527
tangible personal property that is to be incorporated into a 528
structure or improvement to real property. 529

(o) To use or consume the thing transferred in acquiring, 530
formatting, editing, storing, and disseminating data or 531
information by electronic publishing; 532

(p) To provide the thing transferred to the owner or 533
lessee of a motor vehicle that is being repaired or serviced, if 534
the thing transferred is a rented motor vehicle and the 535
purchaser is reimbursed for the cost of the rented motor vehicle 536
by a manufacturer, warrantor, or provider of a maintenance, 537
service, or other similar contract or agreement, with respect to 538
the motor vehicle that is being repaired or serviced; 539

(q) To use or consume the thing transferred directly in 540
production of crude oil and natural gas for sale. Persons 541
engaged in rendering production services for others are deemed 542
engaged in production. 543

As used in division (B) (42) (q) of this section, 544
"production" means operations and tangible personal property 545
directly used to expose and evaluate an underground reservoir 546
that may contain hydrocarbon resources, prepare the wellbore for 547
production, and lift and control all substances yielded by the 548
reservoir to the surface of the earth. 549

(i) For the purposes of division (B) (42) (q) of this 550
section, the "thing transferred" includes, but is not limited 551
to, any of the following: 552

(I) Services provided in the construction of permanent 553
access roads, services provided in the construction of the well 554

site, and services provided in the construction of temporary impoundments;	555 556
(II) Equipment and rigging used for the specific purpose of creating with integrity a wellbore pathway to underground reservoirs;	557 558 559
(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;	560 561 562
(IV) Casing, tubulars, and float and centralizing equipment;	563 564
(V) Trailers to which production equipment is attached;	565
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	566 567 568
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	569 570 571
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	572 573 574 575
(IX) Pressure pumping equipment;	576
(X) Artificial lift systems equipment;	577
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	578 579 580
(XII) Tangible personal property directly used to control	581

production equipment.	582
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	583 584 585
(I) Tangible personal property used primarily in the exploration and production of any mineral resource regulated under Chapter 1509. of the Revised Code other than oil or gas;	586 587 588
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	589 590 591
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	592 593 594
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site;	595 596 597 598
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	599 600 601 602
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	603 604
(VII) Well site fencing, lighting, or security systems;	605
(VIII) Communication devices or services;	606
(IX) Office supplies;	607
(X) Trailers used as offices or lodging;	608

(XI) Motor vehicles of any kind;	609
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	610 611
(XIII) Tangible personal property used primarily as a safety device;	612 613
(XIV) Data collection or monitoring devices;	614
(XV) Access ladders, stairs, or platforms attached to storage tanks.	615 616
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	617 618 619 620 621
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section.	622 623 624 625
As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code.	626 627 628
(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.	629 630 631 632 633 634 635
(44) Sales of replacement and modification parts for	636

engines, airframes, instruments, and interiors in, and paint 637
for, aircraft used primarily in a fractional aircraft ownership 638
program, and sales of services for the repair, modification, and 639
maintenance of such aircraft, and machinery, equipment, and 640
supplies primarily used to provide those services. 641

(45) Sales of telecommunications service that is used 642
directly and primarily to perform the functions of a call 643
center. As used in this division, "call center" means any 644
physical location where telephone calls are placed or received 645
in high volume for the purpose of making sales, marketing, 646
customer service, technical support, or other specialized 647
business activity, and that employs at least fifty individuals 648
that engage in call center activities on a full-time basis, or 649
sufficient individuals to fill fifty full-time equivalent 650
positions. 651

(46) Sales by a telecommunications service vendor of 900 652
service to a subscriber. This division does not apply to 653
information services. 654

(47) Sales of value-added non-voice data service. This 655
division does not apply to any similar service that is not 656
otherwise a telecommunications service. 657

(48) Sales of feminine hygiene products. 658

(49) Sales of materials, parts, equipment, or engines used 659
in the repair or maintenance of aircraft or avionics systems of 660
such aircraft, and sales of repair, remodeling, replacement, or 661
maintenance services in this state performed on aircraft or on 662
an aircraft's avionics, engine, or component materials or parts. 663
As used in division (B) (49) of this section, "aircraft" means 664
aircraft of more than six thousand pounds maximum certified 665

takeoff weight or used exclusively in general aviation. 666

(50) Sales of full flight simulators that are used for 667
pilot or flight-crew training, sales of repair or replacement 668
parts or components, and sales of repair or maintenance services 669
for such full flight simulators. "Full flight simulator" means a 670
replica of a specific type, or make, model, and series of 671
aircraft cockpit. It includes the assemblage of equipment and 672
computer programs necessary to represent aircraft operations in 673
ground and flight conditions, a visual system providing an out- 674
of-the-cockpit view, and a system that provides cues at least 675
equivalent to those of a three-degree-of-freedom motion system, 676
and has the full range of capabilities of the systems installed 677
in the device as described in appendices A and B of part 60 of 678
chapter 1 of title 14 of the Code of Federal Regulations. 679

(51) Any transfer or lease of tangible personal property 680
between the state and JobsOhio in accordance with section 681
4313.02 of the Revised Code. 682

(52) (a) Sales to a qualifying corporation. 683

(b) As used in division (B) (52) of this section: 684

(i) "Qualifying corporation" means a nonprofit corporation 685
organized in this state that leases from an eligible county 686
land, buildings, structures, fixtures, and improvements to the 687
land that are part of or used in a public recreational facility 688
used by a major league professional athletic team or a class A 689
to class AAA minor league affiliate of a major league 690
professional athletic team for a significant portion of the 691
team's home schedule, provided the following apply: 692

(I) The facility is leased from the eligible county 693
pursuant to a lease that requires substantially all of the 694

revenue from the operation of the business or activity conducted 695
by the nonprofit corporation at the facility in excess of 696
operating costs, capital expenditures, and reserves to be paid 697
to the eligible county at least once per calendar year. 698

(II) Upon dissolution and liquidation of the nonprofit 699
corporation, all of its net assets are distributable to the 700
board of commissioners of the eligible county from which the 701
corporation leases the facility. 702

(ii) "Eligible county" has the same meaning as in section 703
307.695 of the Revised Code. 704

(53) Sales to or by a cable service provider, video 705
service provider, or radio or television broadcast station 706
regulated by the federal government of cable service or 707
programming, video service or programming, audio service or 708
programming, or electronically transferred digital audiovisual 709
or audio work. As used in division (B) (53) of this section, 710
"cable service" and "cable service provider" have the same 711
meanings as in section 1332.01 of the Revised Code, and "video 712
service," "video service provider," and "video programming" have 713
the same meanings as in section 1332.21 of the Revised Code. 714

(54) Sales of a digital audio work electronically 715
transferred for delivery through use of a machine, such as a 716
juke box, that does all of the following: 717

(a) Accepts direct payments to operate; 718

(b) Automatically plays a selected digital audio work for 719
a single play upon receipt of a payment described in division 720
(B) (54) (a) of this section; 721

(c) Operates exclusively for the purpose of playing 722
digital audio works in a commercial establishment. 723

(55) (a) Sales of the following occurring on the first	724
Friday of August and the following Saturday and Sunday of each	725
year, beginning in 2018:	726
(i) An item of clothing, the price of which is seventy-	727
five dollars or less;	728
(ii) An item of school supplies, the price of which is	729
twenty dollars or less;	730
(iii) An item of school instructional material, the price	731
of which is twenty dollars or less.	732
(b) As used in division (B) (55) of this section:	733
(i) "Clothing" means all human wearing apparel suitable	734
for general use. "Clothing" includes, but is not limited to,	735
aprons, household and shop; athletic supporters; baby receiving	736
blankets; bathing suits and caps; beach capes and coats; belts	737
and suspenders; boots; coats and jackets; costumes; diapers,	738
children and adult, including disposable diapers; earmuffs;	739
footlets; formal wear; garters and garter belts; girdles; gloves	740
and mittens for general use; hats and caps; hosiery; insoles for	741
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	742
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	743
sneakers; socks and stockings; steel-toed shoes; underwear;	744
uniforms, athletic and nonathletic; and wedding apparel.	745
"Clothing" does not include items purchased for use in a trade	746
or business; clothing accessories or equipment; protective	747
equipment; sports or recreational equipment; belt buckles sold	748
separately; costume masks sold separately; patches and emblems	749
sold separately; sewing equipment and supplies including, but	750
not limited to, knitting needles, patterns, pins, scissors,	751
sewing machines, sewing needles, tape measures, and thimbles;	752

and sewing materials that become part of "clothing" including, 753
but not limited to, buttons, fabric, lace, thread, yarn, and 754
zippers. 755

(ii) "School supplies" means items commonly used by a 756
student in a course of study. "School supplies" includes only 757
the following items: binders; book bags; calculators; cellophane 758
tape; blackboard chalk; compasses; composition books; crayons; 759
erasers; folders, expandable, pocket, plastic, and manila; glue, 760
paste, and paste sticks; highlighters; index cards; index card 761
boxes; legal pads; lunch boxes; markers; notebooks; paper, 762
loose-leaf ruled notebook paper, copy paper, graph paper, 763
tracing paper, manila paper, colored paper, poster board, and 764
construction paper; pencil boxes and other school supply boxes; 765
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 766
and writing tablets. "School supplies" does not include any item 767
purchased for use in a trade or business. 768

(iii) "School instructional material" means written 769
material commonly used by a student in a course of study as a 770
reference and to learn the subject being taught. "School 771
instructional material" includes only the following items: 772
reference books, reference maps and globes, textbooks, and 773
workbooks. "School instructional material" does not include any 774
material purchased for use in a trade or business. 775

~~(56)(a) Sales of diapers or incontinence underpads sold— 776
pursuant to a prescription, for the benefit of a medicaid— 777
recipient with a diagnosis of incontinence, and by a medicaid— 778
provider that maintains a valid provider agreement under section— 779
5164.30 of the Revised Code with the department of medicaid,— 780
provided that the medicaid program covers diapers or— 781
incontinence underpads as an incontinence garment.— 782~~

(b) As used in division (B) (56) (a) of this section:	783
(i) "Diaper" means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.	784 785 786
(ii) "Incontinence underpad" means an absorbent product, not worn on the body, designed to protect furniture or other tangible personal property from soiling or damage due to human incontinence <u>Sales of disposable or washable diapers, including disposable training pants, underpads, or liners, any of which are designed to be worn by an individual who cannot control the individual's bladder or bowel movements.</u>	787 788 789 790 791 792 793
(C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.	794 795 796 797
(D) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.	798 799 800 801 802 803 804 805 806 807 808 809 810
Sec. 5739.03. (A) Except as provided in section 5739.05 or	811

section 5739.051 of the Revised Code, the tax imposed by or 812
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 813
the Revised Code shall be paid by the consumer to the vendor, 814
and each vendor shall collect from the consumer, as a trustee 815
for the state of Ohio, the full and exact amount of the tax 816
payable on each taxable sale, in the manner and at the times 817
provided as follows: 818

(1) If the price is, at or prior to the provision of the 819
service or the delivery of possession of the thing sold to the 820
consumer, paid in currency passed from hand to hand by the 821
consumer or the consumer's agent to the vendor or the vendor's 822
agent, the vendor or the vendor's agent shall collect the tax 823
with and at the same time as the price; 824

(2) If the price is otherwise paid or to be paid, the 825
vendor or the vendor's agent shall, at or prior to the provision 826
of the service or the delivery of possession of the thing sold 827
to the consumer, charge the tax imposed by or pursuant to 828
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 829
Code to the account of the consumer, which amount shall be 830
collected by the vendor from the consumer in addition to the 831
price. Such sale shall be reported on and the amount of the tax 832
applicable thereto shall be remitted with the return for the 833
period in which the sale is made, and the amount of the tax 834
shall become a legal charge in favor of the vendor and against 835
the consumer. 836

(B) (1) (a) If any sale is claimed to be exempt under 837
division (E) of section 5739.01 of the Revised Code or under 838
section 5739.02 of the Revised Code, with the exception of 839
divisions (B) (1) to (11), (28), (48), ~~or (55)~~, or (56) of 840
section 5739.02 of the Revised Code, or if the consumer claims 841

the transaction is not a taxable sale due to one or more of the 842
exclusions provided under divisions (JJ) (1) to (5) of section 843
5739.01 of the Revised Code, the consumer must provide to the 844
vendor, and the vendor must obtain from the consumer, a 845
certificate specifying the reason that the sale is not legally 846
subject to the tax. The certificate shall be in such form, and 847
shall be provided either in a hard copy form or electronic form, 848
as the tax commissioner prescribes. 849

(b) A vendor that obtains a fully completed exemption 850
certificate from a consumer is relieved of liability for 851
collecting and remitting tax on any sale covered by that 852
certificate. If it is determined the exemption was improperly 853
claimed, the consumer shall be liable for any tax due on that 854
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 855
Chapter 5741. of the Revised Code. Relief under this division 856
from liability does not apply to any of the following: 857

(i) A vendor that fraudulently fails to collect tax; 858

(ii) A vendor that solicits consumers to participate in 859
the unlawful claim of an exemption; 860

(iii) A vendor that accepts an exemption certificate from 861
a consumer that claims an exemption based on who purchases or 862
who sells property or a service, when the subject of the 863
transaction sought to be covered by the exemption certificate is 864
actually received by the consumer at a location operated by the 865
vendor in this state, and this state has posted to its web site 866
an exemption certificate form that clearly and affirmatively 867
indicates that the claimed exemption is not available in this 868
state; 869

(iv) A vendor that accepts an exemption certificate from a 870

consumer who claims a multiple points of use exemption under 871
division (D) of section 5739.033 of the Revised Code, if the 872
item purchased is tangible personal property, other than 873
prewritten computer software. 874

(2) The vendor shall maintain records, including exemption 875
certificates, of all sales on which a consumer has claimed an 876
exemption, and provide them to the tax commissioner on request. 877

(3) The tax commissioner may establish an identification 878
system whereby the commissioner issues an identification number 879
to a consumer that is exempt from payment of the tax. The 880
consumer must present the number to the vendor, if any sale is 881
claimed to be exempt as provided in this section. 882

(4) If no certificate is provided or obtained within 883
ninety days after the date on which such sale is consummated, it 884
shall be presumed that the tax applies. Failure to have so 885
provided or obtained a certificate shall not preclude a vendor, 886
within one hundred twenty days after the tax commissioner gives 887
written notice of intent to levy an assessment, from either 888
establishing that the sale is not subject to the tax, or 889
obtaining, in good faith, a fully completed exemption 890
certificate. 891

(5) Certificates need not be obtained nor provided where 892
the identity of the consumer is such that the transaction is 893
never subject to the tax imposed or where the item of tangible 894
personal property sold or the service provided is never subject 895
to the tax imposed, regardless of use, or when the sale is in 896
interstate commerce. 897

(6) If a transaction is claimed to be exempt under 898
division (B) (13) of section 5739.02 of the Revised Code, the 899

contractor shall obtain certification of the claimed exemption 900
from the contractee. This certification shall be in addition to 901
an exemption certificate provided by the contractor to the 902
vendor. A contractee that provides a certification under this 903
division shall be deemed to be the consumer of all items 904
purchased by the contractor under the claim of exemption, if it 905
is subsequently determined that the exemption is not properly 906
claimed. The certification shall be in such form as the tax 907
commissioner prescribes. 908

(C) As used in this division, "contractee" means a person 909
who seeks to enter or enters into a contract or agreement with a 910
contractor or vendor for the construction of real property or 911
for the sale and installation onto real property of tangible 912
personal property. 913

Any contractor or vendor may request from any contractee a 914
certification of what portion of the property to be transferred 915
under such contract or agreement is to be incorporated into the 916
realty and what portion will retain its status as tangible 917
personal property after installation is completed. The 918
contractor or vendor shall request the certification by 919
certified mail delivered to the contractee, return receipt 920
requested. Upon receipt of such request and prior to entering 921
into the contract or agreement, the contractee shall provide to 922
the contractor or vendor a certification sufficiently detailed 923
to enable the contractor or vendor to ascertain the resulting 924
classification of all materials purchased or fabricated by the 925
contractor or vendor and transferred to the contractee. This 926
requirement applies to a contractee regardless of whether the 927
contractee holds a direct payment permit under section 5739.031 928
of the Revised Code or provides to the contractor or vendor an 929
exemption certificate as provided under this section. 930

For the purposes of the taxes levied by this chapter and 931
Chapter 5741. of the Revised Code, the contractor or vendor may 932
in good faith rely on the contractee's certification. 933
Notwithstanding division (B) of section 5739.01 of the Revised 934
Code, if the tax commissioner determines that certain property 935
certified by the contractee as tangible personal property 936
pursuant to this division is, in fact, real property, the 937
contractee shall be considered to be the consumer of all 938
materials so incorporated into that real property and shall be 939
liable for the applicable tax, and the contractor or vendor 940
shall be excused from any liability on those materials. 941

If a contractee fails to provide such certification upon 942
the request of the contractor or vendor, the contractor or 943
vendor shall comply with the provisions of this chapter and 944
Chapter 5741. of the Revised Code without the certification. If 945
the tax commissioner determines that such compliance has been 946
performed in good faith and that certain property treated as 947
tangible personal property by the contractor or vendor is, in 948
fact, real property, the contractee shall be considered to be 949
the consumer of all materials so incorporated into that real 950
property and shall be liable for the applicable tax, and the 951
construction contractor or vendor shall be excused from any 952
liability on those materials. 953

This division does not apply to any contract or agreement 954
where the tax commissioner determines as a fact that a 955
certification under this division was made solely on the 956
decision or advice of the contractor or vendor. 957

(D) Notwithstanding division (B) of section 5739.01 of the 958
Revised Code, whenever the total rate of tax imposed under this 959
chapter is increased after the date after a construction 960

contract is entered into, the contractee shall reimburse the 961
construction contractor for any additional tax paid on tangible 962
property consumed or services received pursuant to the contract. 963

(E) A vendor who files a petition for reassessment 964
contesting the assessment of tax on sales for which the vendor 965
obtained no valid exemption certificates and for which the 966
vendor failed to establish that the sales were properly not 967
subject to the tax during the one-hundred-twenty-day period 968
allowed under division (B) of this section, may present to the 969
tax commissioner additional evidence to prove that the sales 970
were properly subject to a claim of exception or exemption. The 971
vendor shall file such evidence within ninety days of the 972
receipt by the vendor of the notice of assessment, except that, 973
upon application and for reasonable cause, the period for 974
submitting such evidence shall be extended thirty days. 975

The commissioner shall consider such additional evidence 976
in reaching the final determination on the assessment and 977
petition for reassessment. 978

(F) Whenever a vendor refunds the price, minus any 979
separately stated delivery charge, of an item of tangible 980
personal property on which the tax imposed under this chapter 981
has been paid, the vendor shall also refund the amount of tax 982
paid, minus the amount of tax attributable to the delivery 983
charge. 984

Section 2. That existing sections 5739.02 and 5739.03 of 985
the Revised Code are hereby repealed. 986

Section 3. The amendment by this act of sections 5739.02 987
and 5739.03 of the Revised Code applies on and after the first 988
day of the first month that begins at least thirty days after 989

the effective date of this section.

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