

**As Reported by the Senate Ways and Means Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**S. B. No. 235**

**Senator Roegner**

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**A BILL**

To amend sections 5739.01, 5739.02, and 5739.03 of 1  
the Revised Code to exempt documentary service 2  
charges and income tax electronic filing fees 3  
from sales and use taxation. 4

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

**Section 1.** That sections 5739.01, 5739.02, and 5739.03 of 5  
the Revised Code be amended to read as follows: 6

**Sec. 5739.01.** As used in this chapter: 7

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

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

(1) All transactions by which title or possession, or 17  
both, of tangible personal property, is or is to be transferred, 18

or a license to use or consume tangible personal property is or	19
is to be granted;	20
(2) All transactions by which lodging by a hotel is or is	21
to be furnished to transient guests;	22
(3) All transactions by which:	23
(a) An item of tangible personal property is or is to be	24
repaired, except property, the purchase of which would not be	25
subject to the tax imposed by section 5739.02 of the Revised	26
Code;	27
(b) An item of tangible personal property is or is to be	28
installed, except property, the purchase of which would not be	29
subject to the tax imposed by section 5739.02 of the Revised	30
Code or property that is or is to be incorporated into and will	31
become a part of a production, transmission, transportation, or	32
distribution system for the delivery of a public utility	33
service;	34
(c) The service of washing, cleaning, waxing, polishing,	35
or painting a motor vehicle is or is to be furnished;	36
(d) Laundry and dry cleaning services are or are to be	37
provided;	38
(e) Automatic data processing, computer services, or	39
electronic information services are or are to be provided for	40
use in business when the true object of the transaction is the	41
receipt by the consumer of automatic data processing, computer	42
services, or electronic information services rather than the	43
receipt of personal or professional services to which automatic	44
data processing, computer services, or electronic information	45
services are incidental or supplemental. Notwithstanding any	46
other provision of this chapter, such transactions that occur	47

between members of an affiliated group are not sales. An 48  
"affiliated group" means two or more persons related in such a 49  
way that one person owns or controls the business operation of 50  
another member of the group. In the case of corporations with 51  
stock, one corporation owns or controls another if it owns more 52  
than fifty per cent of the other corporation's common stock with 53  
voting rights. 54

(f) Telecommunications service, including prepaid calling 55  
service, prepaid wireless calling service, or ancillary service, 56  
is or is to be provided, but not including coin-operated 57  
telephone service; 58

(g) Landscaping and lawn care service is or is to be 59  
provided; 60

(h) Private investigation and security service is or is to 61  
be provided; 62

(i) Information services or tangible personal property is 63  
provided or ordered by means of a nine hundred telephone call; 64

(j) Building maintenance and janitorial service is or is 65  
to be provided; 66

(k) Exterminating service is or is to be provided; 67

(l) Physical fitness facility service is or is to be 68  
provided; 69

(m) Recreation and sports club service is or is to be 70  
provided; 71

(n) Satellite broadcasting service is or is to be 72  
provided; 73

(o) Personal care service is or is to be provided to an 74

individual. As used in this division, "personal care service" 75  
includes skin care, the application of cosmetics, manicuring, 76  
pedicuring, hair removal, tattooing, body piercing, tanning, 77  
massage, and other similar services. "Personal care service" 78  
does not include a service provided by or on the order of a 79  
licensed physician or licensed chiropractor, or the cutting, 80  
coloring, or styling of an individual's hair. 81

(p) The transportation of persons by motor vehicle or 82  
aircraft is or is to be provided, when the transportation is 83  
entirely within this state, except for transportation provided 84  
by an ambulance service, by a transit bus, as defined in section 85  
5735.01 of the Revised Code, and transportation provided by a 86  
citizen of the United States holding a certificate of public 87  
convenience and necessity issued under 49 U.S.C. 41102; 88

(q) Motor vehicle towing service is or is to be provided. 89  
As used in this division, "motor vehicle towing service" means 90  
the towing or conveyance of a wrecked, disabled, or illegally 91  
parked motor vehicle. 92

(r) Snow removal service is or is to be provided. As used 93  
in this division, "snow removal service" means the removal of 94  
snow by any mechanized means, but does not include the providing 95  
of such service by a person that has less than five thousand 96  
dollars in sales of such service during the calendar year. 97

(s) Electronic publishing service is or is to be provided 98  
to a consumer for use in business, except that such transactions 99  
occurring between members of an affiliated group, as defined in 100  
division (B) (3) (e) of this section, are not sales. 101

(4) All transactions by which printed, imprinted, 102  
overprinted, lithographic, multilithic, blueprinted, 103

photostatic, or other productions or reproductions of written or 104  
graphic matter are or are to be furnished or transferred; 105

(5) The production or fabrication of tangible personal 106  
property for a consideration for consumers who furnish either 107  
directly or indirectly the materials used in the production of 108  
fabrication work; and include the furnishing, preparing, or 109  
serving for a consideration of any tangible personal property 110  
consumed on the premises of the person furnishing, preparing, or 111  
serving such tangible personal property. Except as provided in 112  
section 5739.03 of the Revised Code, a construction contract 113  
pursuant to which tangible personal property is or is to be 114  
incorporated into a structure or improvement on and becoming a 115  
part of real property is not a sale of such tangible personal 116  
property. The construction contractor is the consumer of such 117  
tangible personal property, provided that the sale and 118  
installation of carpeting, the sale and installation of 119  
agricultural land tile, the sale and erection or installation of 120  
portable grain bins, or the provision of landscaping and lawn 121  
care service and the transfer of property as part of such 122  
service is never a construction contract. 123

As used in division (B) (5) of this section: 124

(a) "Agricultural land tile" means fired clay or concrete 125  
tile, or flexible or rigid perforated plastic pipe or tubing, 126  
incorporated or to be incorporated into a subsurface drainage 127  
system appurtenant to land used or to be used primarily in 128  
production by farming, agriculture, horticulture, or 129  
floriculture. The term does not include such materials when they 130  
are or are to be incorporated into a drainage system appurtenant 131  
to a building or structure even if the building or structure is 132  
used or to be used in such production. 133

(b) "Portable grain bin" means a structure that is used or	134
to be used by a person engaged in farming or agriculture to	135
shelter the person's grain and that is designed to be	136
disassembled without significant damage to its component parts.	137
(6) All transactions in which all of the shares of stock	138
of a closely held corporation are transferred, or an ownership	139
interest in a pass-through entity, as defined in section 5733.04	140
of the Revised Code, is transferred, if the corporation or pass-	141
through entity is not engaging in business and its entire assets	142
consist of boats, planes, motor vehicles, or other tangible	143
personal property operated primarily for the use and enjoyment	144
of the shareholders or owners;	145
(7) All transactions in which a warranty, maintenance or	146
service contract, or similar agreement by which the vendor of	147
the warranty, contract, or agreement agrees to repair or	148
maintain the tangible personal property of the consumer is or is	149
to be provided;	150
(8) The transfer of copyrighted motion picture films used	151
solely for advertising purposes, except that the transfer of	152
such films for exhibition purposes is not a sale;	153
(9) All transactions by which tangible personal property	154
is or is to be stored, except such property that the consumer of	155
the storage holds for sale in the regular course of business;	156
(10) All transactions in which "guaranteed auto	157
protection" is provided whereby a person promises to pay to the	158
consumer the difference between the amount the consumer receives	159
from motor vehicle insurance and the amount the consumer owes to	160
a person holding title to or a lien on the consumer's motor	161
vehicle in the event the consumer's motor vehicle suffers a	162

total loss under the terms of the motor vehicle insurance policy 163  
or is stolen and not recovered, if the protection and its price 164  
are included in the purchase or lease agreement; 165

(11) (a) Except as provided in division (B) (11) (b) of this 166  
section, all transactions by which health care services are paid 167  
for, reimbursed, provided, delivered, arranged for, or otherwise 168  
made available by a medicaid health insuring corporation 169  
pursuant to the corporation's contract with the state. 170

(b) If the centers for medicare and medicaid services of 171  
the United States department of health and human services 172  
determines that the taxation of transactions described in 173  
division (B) (11) (a) of this section constitutes an impermissible 174  
health care-related tax under the "Social Security Act," section 175  
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 176  
the medicaid director shall notify the tax commissioner of that 177  
determination. Beginning with the first day of the month 178  
following that notification, the transactions described in 179  
division (B) (11) (a) of this section are not sales for the 180  
purposes of this chapter or Chapter 5741. of the Revised Code. 181  
The tax commissioner shall order that the collection of taxes 182  
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 183  
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 184  
for transactions occurring on or after that date. 185

(12) All transactions by which a specified digital product 186  
is provided for permanent use or less than permanent use, 187  
regardless of whether continued payment is required. 188

Except as provided in this section, "sale" and "selling" 189  
do not include transfers of interest in leased property where 190  
the original lessee and the terms of the original lease 191  
agreement remain unchanged, or professional, insurance, or 192

personal service transactions that involve the transfer of 193  
tangible personal property as an inconsequential element, for 194  
which no separate charges are made. 195

(C) "Vendor" means the person providing the service or by 196  
whom the transfer effected or license given by a sale is or is 197  
to be made or given and, for sales described in division (B) (3) 198  
(i) of this section, the telecommunications service vendor that 199  
provides the nine hundred telephone service; if two or more 200  
persons are engaged in business at the same place of business 201  
under a single trade name in which all collections on account of 202  
sales by each are made, such persons shall constitute a single 203  
vendor. 204

Physicians, dentists, hospitals, and veterinarians who are 205  
engaged in selling tangible personal property as received from 206  
others, such as eyeglasses, mouthwashes, dentifrices, or similar 207  
articles, are vendors. Veterinarians who are engaged in 208  
transferring to others for a consideration drugs, the dispensing 209  
of which does not require an order of a licensed veterinarian or 210  
physician under federal law, are vendors. 211

The operator of any peer-to-peer car sharing program shall 212  
be considered to be the vendor. 213

(D) (1) "Consumer" means the person for whom the service is 214  
provided, to whom the transfer effected or license given by a 215  
sale is or is to be made or given, to whom the service described 216  
in division (B) (3) (f) or (i) of this section is charged, or to 217  
whom the admission is granted. 218

(2) Physicians, dentists, hospitals, and blood banks 219  
operated by nonprofit institutions and persons licensed to 220  
practice veterinary medicine, surgery, and dentistry are 221

consumers of all tangible personal property and services 222  
purchased by them in connection with the practice of medicine, 223  
dentistry, the rendition of hospital or blood bank service, or 224  
the practice of veterinary medicine, surgery, and dentistry. In 225  
addition to being consumers of drugs administered by them or by 226  
their assistants according to their direction, veterinarians 227  
also are consumers of drugs that under federal law may be 228  
dispensed only by or upon the order of a licensed veterinarian 229  
or physician, when transferred by them to others for a 230  
consideration to provide treatment to animals as directed by the 231  
veterinarian. 232

(3) A person who performs a facility management, or 233  
similar service contract for a contractee is a consumer of all 234  
tangible personal property and services purchased for use in 235  
connection with the performance of such contract, regardless of 236  
whether title to any such property vests in the contractee. The 237  
purchase of such property and services is not subject to the 238  
exception for resale under division (E) of this section. 239

(4) (a) In the case of a person who purchases printed 240  
matter for the purpose of distributing it or having it 241  
distributed to the public or to a designated segment of the 242  
public, free of charge, that person is the consumer of that 243  
printed matter, and the purchase of that printed matter for that 244  
purpose is a sale. 245

(b) In the case of a person who produces, rather than 246  
purchases, printed matter for the purpose of distributing it or 247  
having it distributed to the public or to a designated segment 248  
of the public, free of charge, that person is the consumer of 249  
all tangible personal property and services purchased for use or 250  
consumption in the production of that printed matter. That 251

person is not entitled to claim exemption under division (B) (42)	252
(f) of section 5739.02 of the Revised Code for any material	253
incorporated into the printed matter or any equipment, supplies,	254
or services primarily used to produce the printed matter.	255
(c) The distribution of printed matter to the public or to	256
a designated segment of the public, free of charge, is not a	257
sale to the members of the public to whom the printed matter is	258
distributed or to any persons who purchase space in the printed	259
matter for advertising or other purposes.	260
(5) A person who makes sales of any of the services listed	261
in division (B) (3) of this section is the consumer of any	262
tangible personal property used in performing the service. The	263
purchase of that property is not subject to the resale exception	264
under division (E) of this section.	265
(6) A person who engages in highway transportation for	266
hire is the consumer of all packaging materials purchased by	267
that person and used in performing the service, except for	268
packaging materials sold by such person in a transaction	269
separate from the service.	270
(7) In the case of a transaction for health care services	271
under division (B) (11) of this section, a medicaid health	272
insuring corporation is the consumer of such services. The	273
purchase of such services by a medicaid health insuring	274
corporation is not subject to the exception for resale under	275
division (E) of this section or to the exemptions provided under	276
divisions (B) (12), (18), (19), and (22) of section 5739.02 of	277
the Revised Code.	278
(E) "Retail sale" and "sales at retail" include all sales,	279
except those in which the purpose of the consumer is to resell	280

the thing transferred or benefit of the service provided, by a 281  
person engaging in business, in the form in which the same is, 282  
or is to be, received by the person. 283

(F) "Business" includes any activity engaged in by any 284  
person with the object of gain, benefit, or advantage, either 285  
direct or indirect. "Business" does not include the activity of 286  
a person in managing and investing the person's own funds. 287

(G) "Engaging in business" means commencing, conducting, 288  
or continuing in business, and liquidating a business when the 289  
liquidator thereof holds itself out to the public as conducting 290  
such business. Making a casual sale is not engaging in business. 291

(H) (1) (a) "Price," except as provided in divisions (H) (2), 292  
(3), and (4) of this section, means the total amount of 293  
consideration, including cash, credit, property, and services, 294  
for which tangible personal property or services are sold, 295  
leased, or rented, valued in money, whether received in money or 296  
otherwise, without any deduction for any of the following: 297

(i) The vendor's cost of the property sold; 298

(ii) The cost of materials used, labor or service costs, 299  
interest, losses, all costs of transportation to the vendor, all 300  
taxes imposed on the vendor, including the tax imposed under 301  
Chapter 5751. of the Revised Code, and any other expense of the 302  
vendor; 303

(iii) Charges by the vendor for any services necessary to 304  
complete the sale; 305

(iv) Delivery charges. As used in this division, "delivery 306  
charges" means charges by the vendor for preparation and 307  
delivery to a location designated by the consumer of tangible 308  
personal property or a service, including transportation, 309

shipping, postage, handling, crating, and packing.	310
(v) Installation charges;	311
(vi) Credit for any trade-in.	312
(b) "Price" includes consideration received by the vendor	313
from a third party, if the vendor actually receives the	314
consideration from a party other than the consumer, and the	315
consideration is directly related to a price reduction or	316
discount on the sale; the vendor has an obligation to pass the	317
price reduction or discount through to the consumer; the amount	318
of the consideration attributable to the sale is fixed and	319
determinable by the vendor at the time of the sale of the item	320
to the consumer; and one of the following criteria is met:	321
(i) The consumer presents a coupon, certificate, or other	322
document to the vendor to claim a price reduction or discount	323
where the coupon, certificate, or document is authorized,	324
distributed, or granted by a third party with the understanding	325
that the third party will reimburse any vendor to whom the	326
coupon, certificate, or document is presented;	327
(ii) The consumer identifies the consumer's self to the	328
seller as a member of a group or organization entitled to a	329
price reduction or discount. A preferred customer card that is	330
available to any patron does not constitute membership in such a	331
group or organization.	332
(iii) The price reduction or discount is identified as a	333
third party price reduction or discount on the invoice received	334
by the consumer, or on a coupon, certificate, or other document	335
presented by the consumer.	336
(c) "Price" does not include any of the following:	337

(i) Discounts, including cash, term, or coupons that are 338  
not reimbursed by a third party that are allowed by a vendor and 339  
taken by a consumer on a sale; 340

(ii) Interest, financing, and carrying charges from credit 341  
extended on the sale of tangible personal property or services, 342  
if the amount is separately stated on the invoice, bill of sale, 343  
or similar document given to the purchaser; 344

(iii) Any taxes legally imposed directly on the consumer 345  
that are separately stated on the invoice, bill of sale, or 346  
similar document given to the consumer. For the purpose of this 347  
division, the tax imposed under Chapter 5751. of the Revised 348  
Code is not a tax directly on the consumer, even if the tax or a 349  
portion thereof is separately stated. 350

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 351  
this section, any discount allowed by an automobile manufacturer 352  
to its employee, or to the employee of a supplier, on the 353  
purchase of a new motor vehicle from a new motor vehicle dealer 354  
in this state. 355

(v) The dollar value of a gift card that is not sold by a 356  
vendor or purchased by a consumer and that is redeemed by the 357  
consumer in purchasing tangible personal property or services if 358  
the vendor is not reimbursed and does not receive compensation 359  
from a third party to cover all or part of the gift card value. 360  
For the purposes of this division, a gift card is not sold by a 361  
vendor or purchased by a consumer if it is distributed pursuant 362  
to an awards, loyalty, or promotional program. Past and present 363  
purchases of tangible personal property or services by the 364  
consumer shall not be treated as consideration exchanged for a 365  
gift card. 366

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

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

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

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

credit.	397
(J) "Place of business" means any location at which a person engages in business.	398 399
(K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person.	400 401 402 403 404 405
(L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year.	406 407 408 409 410 411 412 413 414 415 416
(M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in section 5739.091 of the Revised Code.	417 418 419 420 421 422 423
(N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty	424 425

consecutive days. 426

(O) "Making retail sales" means the effecting of 427  
transactions wherein one party is obligated to pay the price and 428  
the other party is obligated to provide a service or to transfer 429  
title to or possession of the item sold. "Making retail sales" 430  
does not include the preliminary acts of promoting or soliciting 431  
the retail sales, other than the distribution of printed matter 432  
which displays or describes and prices the item offered for 433  
sale, nor does it include delivery of a predetermined quantity 434  
of tangible personal property or transportation of property or 435  
personnel to or from a place where a service is performed. 436

(P) "Used directly in the rendition of a public utility 437  
service" means that property that is to be incorporated into and 438  
will become a part of the consumer's production, transmission, 439  
transportation, or distribution system and that retains its 440  
classification as tangible personal property after such 441  
incorporation; fuel or power used in the production, 442  
transmission, transportation, or distribution system; and 443  
tangible personal property used in the repair and maintenance of 444  
the production, transmission, transportation, or distribution 445  
system, including only such motor vehicles as are specially 446  
designed and equipped for such use. Tangible personal property 447  
and services used primarily in providing highway transportation 448  
for hire are not used directly in the rendition of a public 449  
utility service. In this definition, "public utility" includes a 450  
citizen of the United States holding, and required to hold, a 451  
certificate of public convenience and necessity issued under 49 452  
U.S.C. 41102. 453

(Q) "Refining" means removing or separating a desirable 454  
product from raw or contaminated materials by distillation or 455

physical, mechanical, or chemical processes. 456

(R) "Assembly" and "assembling" mean attaching or fitting 457  
together parts to form a product, but do not include packaging a 458  
product. 459

(S) "Manufacturing operation" means a process in which 460  
materials are changed, converted, or transformed into a 461  
different state or form from which they previously existed and 462  
includes refining materials, assembling parts, and preparing raw 463  
materials and parts by mixing, measuring, blending, or otherwise 464  
committing such materials or parts to the manufacturing process. 465  
"Manufacturing operation" does not include packaging. 466

(T) "Fiscal officer" means, with respect to a regional 467  
transit authority, the secretary-treasurer thereof, and with 468  
respect to a county that is a transit authority, the fiscal 469  
officer of the county transit board if one is appointed pursuant 470  
to section 306.03 of the Revised Code or the county auditor if 471  
the board of county commissioners operates the county transit 472  
system. 473

(U) "Transit authority" means a regional transit authority 474  
created pursuant to section 306.31 of the Revised Code or a 475  
county in which a county transit system is created pursuant to 476  
section 306.01 of the Revised Code. For the purposes of this 477  
chapter, a transit authority must extend to at least the entire 478  
area of a single county. A transit authority that includes 479  
territory in more than one county must include all the area of 480  
the most populous county that is a part of such transit 481  
authority. County population shall be measured by the most 482  
recent census taken by the United States census bureau. 483

(V) "Legislative authority" means, with respect to a 484

regional transit authority, the board of trustees thereof, and 485  
with respect to a county that is a transit authority, the board 486  
of county commissioners. 487

(W) "Territory of the transit authority" means all of the 488  
area included within the territorial boundaries of a transit 489  
authority as they from time to time exist. Such territorial 490  
boundaries must at all times include all the area of a single 491  
county or all the area of the most populous county that is a 492  
part of such transit authority. County population shall be 493  
measured by the most recent census taken by the United States 494  
census bureau. 495

(X) "Providing a service" means providing or furnishing 496  
anything described in division (B) (3) of this section for 497  
consideration. 498

(Y) (1) (a) "Automatic data processing" means processing of 499  
others' data, including keypunching or similar data entry 500  
services together with verification thereof, or providing access 501  
to computer equipment for the purpose of processing data. 502

(b) "Computer services" means providing services 503  
consisting of specifying computer hardware configurations and 504  
evaluating technical processing characteristics, computer 505  
programming, and training of computer programmers and operators, 506  
provided in conjunction with and to support the sale, lease, or 507  
operation of taxable computer equipment or systems. 508

(c) "Electronic information services" means providing 509  
access to computer equipment by means of telecommunications 510  
equipment for the purpose of either of the following: 511

(i) Examining or acquiring data stored in or accessible to 512  
the computer equipment; 513

(ii) Placing data into the computer equipment to be 514  
retrieved by designated recipients with access to the computer 515  
equipment. 516

"Electronic information services" does not include 517  
electronic publishing. 518

(d) "Automatic data processing, computer services, or 519  
electronic information services" shall not include personal or 520  
professional services. 521

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 522  
section, "personal and professional services" means all services 523  
other than automatic data processing, computer services, or 524  
electronic information services, including but not limited to: 525

(a) Accounting and legal services such as advice on tax 526  
matters, asset management, budgetary matters, quality control, 527  
information security, and auditing and any other situation where 528  
the service provider receives data or information and studies, 529  
alters, analyzes, interprets, or adjusts such material; 530

(b) Analyzing business policies and procedures; 531

(c) Identifying management information needs; 532

(d) Feasibility studies, including economic and technical 533  
analysis of existing or potential computer hardware or software 534  
needs and alternatives; 535

(e) Designing policies, procedures, and custom software 536  
for collecting business information, and determining how data 537  
should be summarized, sequenced, formatted, processed, 538  
controlled, and reported so that it will be meaningful to 539  
management; 540

(f) Developing policies and procedures that document how 541

business events and transactions are to be authorized, executed, and controlled;	542 543
(g) Testing of business procedures;	544
(h) Training personnel in business procedure applications;	545
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	546 547 548 549 550 551 552
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	553 554
(k) Providing digital advertising services;	555
<u>(l) Providing services to electronically file any federal, state, or local individual income tax return, report, or other related document or schedule with a federal, state, or local government entity or to electronically remit a payment of any such individual income tax to such an entity. For the purpose of this division, "individual income tax" does not include federal, state, or local taxes withheld by an employer from an employee's compensation.</u>	556 557 558 559 560 561 562 563
The services listed in divisions (Y) (2) (a) to <del>(k)</del> <u>(l)</u> of this section are not automatic data processing or computer services.	564 565 566
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	567 568 569

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

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

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

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

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

the consumer's primary purpose for the underlying transaction is	600
the processed data or information;	601
(b) Installation or maintenance of wiring or equipment on	602
a customer's premises;	603
(c) Tangible personal property;	604
(d) Advertising, including directory advertising;	605
(e) Billing and collection services provided to third	606
parties;	607
(f) Internet access service;	608
(g) Radio and television audio and video programming	609
services, regardless of the medium, including the furnishing of	610
transmission, conveyance, and routing of such services by the	611
programming service provider. Radio and television audio and	612
video programming services include, but are not limited to,	613
cable service, as defined in 47 U.S.C. 522(6), and audio and	614
video programming services delivered by commercial mobile radio	615
service providers, as defined in 47 C.F.R. 20.3;	616
(h) Ancillary service;	617
(i) Digital products delivered electronically, including	618
software, music, video, reading materials, or ring tones.	619
(2) "Ancillary service" means a service that is associated	620
with or incidental to the provision of telecommunications	621
service, including conference bridging service, detailed	622
telecommunications billing service, directory assistance,	623
vertical service, and voice mail service. As used in this	624
division:	625
(a) "Conference bridging service" means an ancillary	626

service that links two or more participants of an audio or video conference call, including providing a telephone number. 627  
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"Conference bridging service" does not include 629  
telecommunications services used to reach the conference bridge. 630

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. 631  
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(c) "Directory assistance" means an ancillary service of providing telephone number or address information. 634  
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(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service. 636  
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(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. 641  
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(3) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service, and which is typically marketed under the name "900 service" and any subsequent numbers designated by the federal communications commission. "900 service" does not include the charge for collection services provided by the seller of the telecommunications service to the subscriber, or services or products sold by the subscriber to the subscriber's customer. 646  
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(4) "Prepaid calling service" means the right to access 656  
exclusively telecommunications services, which must be paid for 657  
in advance and which enables the origination of calls using an 658  
access number or authorization code, whether manually or 659  
electronically dialed, and that is sold in predetermined units 660  
or dollars of which the number declines with use in a known 661  
amount. 662

(5) "Prepaid wireless calling service" means a 663  
telecommunications service that provides the right to utilize 664  
mobile telecommunications service as well as other non- 665  
telecommunications services, including the download of digital 666  
products delivered electronically, and content and ancillary 667  
services, that must be paid for in advance and that is sold in 668  
predetermined units or dollars of which the number declines with 669  
use in a known amount. 670

(6) "Value-added non-voice data service" means a 671  
telecommunications service in which computer processing 672  
applications are used to act on the form, content, code, or 673  
protocol of the information or data primarily for a purpose 674  
other than transmission, conveyance, or routing. 675

(7) "Coin-operated telephone service" means a 676  
telecommunications service paid for by inserting money into a 677  
telephone accepting direct deposits of money to operate. 678

(8) "Customer" has the same meaning as in section 5739.034 679  
of the Revised Code. 680

(BB) "Laundry and dry cleaning services" means removing 681  
soil or dirt from towels, linens, articles of clothing, or other 682  
fabric items that belong to others and supplying towels, linens, 683  
articles of clothing, or other fabric items. "Laundry and dry 684

cleaning services" does not include the provision of self- 685  
service facilities for use by consumers to remove soil or dirt 686  
from towels, linens, articles of clothing, or other fabric 687  
items. 688

(CC) "Magazines distributed as controlled circulation 689  
publications" means magazines containing at least twenty-four 690  
pages, at least twenty-five per cent editorial content, issued 691  
at regular intervals four or more times a year, and circulated 692  
without charge to the recipient, provided that such magazines 693  
are not owned or controlled by individuals or business concerns 694  
which conduct such publications as an auxiliary to, and 695  
essentially for the advancement of the main business or calling 696  
of, those who own or control them. 697

(DD) "Landscaping and lawn care service" means the 698  
services of planting, seeding, sodding, removing, cutting, 699  
trimming, pruning, mulching, aerating, applying chemicals, 700  
watering, fertilizing, and providing similar services to 701  
establish, promote, or control the growth of trees, shrubs, 702  
flowers, grass, ground cover, and other flora, or otherwise 703  
maintaining a lawn or landscape grown or maintained by the owner 704  
for ornamentation or other nonagricultural purpose. However, 705  
"landscaping and lawn care service" does not include the 706  
providing of such services by a person who has less than five 707  
thousand dollars in sales of such services during the calendar 708  
year. 709

(EE) "Private investigation and security service" means 710  
the performance of any activity for which the provider of such 711  
service is required to be licensed pursuant to Chapter 4749. of 712  
the Revised Code, or would be required to be so licensed in 713  
performing such services in this state, and also includes the 714

services of conducting polygraph examinations and of monitoring 715  
or overseeing the activities on or in, or the condition of, the 716  
consumer's home, business, or other facility by means of 717  
electronic or similar monitoring devices. "Private investigation 718  
and security service" does not include special duty services 719  
provided by off-duty police officers, deputy sheriffs, and other 720  
peace officers regularly employed by the state or a political 721  
subdivision. 722

(FF) "Information services" means providing conversation, 723  
giving consultation or advice, playing or making a voice or 724  
other recording, making or keeping a record of the number of 725  
callers, and any other service provided to a consumer by means 726  
of a nine hundred telephone call, except when the nine hundred 727  
telephone call is the means by which the consumer makes a 728  
contribution to a recognized charity. 729

(GG) "Research and development" means designing, creating, 730  
or formulating new or enhanced products, equipment, or 731  
manufacturing processes, and also means conducting scientific or 732  
technological inquiry and experimentation in the physical 733  
sciences with the goal of increasing scientific knowledge which 734  
may reveal the bases for new or enhanced products, equipment, or 735  
manufacturing processes. 736

(HH) "Qualified research and development equipment" means 737  
capitalized tangible personal property, and leased personal 738  
property that would be capitalized if purchased, used by a 739  
person primarily to perform research and development. Tangible 740  
personal property primarily used in testing, as defined in 741  
division (A)(4) of section 5739.011 of the Revised Code, or used 742  
for recording or storing test results, is not qualified research 743  
and development equipment unless such property is primarily used 744

by the consumer in testing the product, equipment, or 745  
manufacturing process being created, designed, or formulated by 746  
the consumer in the research and development activity or in 747  
recording or storing such test results. 748

(II) "Building maintenance and janitorial service" means 749  
cleaning the interior or exterior of a building and any tangible 750  
personal property located therein or thereon, including any 751  
services incidental to such cleaning for which no separate 752  
charge is made. However, "building maintenance and janitorial 753  
service" does not include the providing of such service by a 754  
person who has less than five thousand dollars in sales of such 755  
service during the calendar year. As used in this division, 756  
"cleaning" does not include sanitation services necessary for an 757  
establishment described in 21 U.S.C. 608 to comply with rules 758  
and regulations adopted pursuant to that section. 759

(JJ) "Exterminating service" means eradicating or 760  
attempting to eradicate vermin infestations from a building or 761  
structure, or the area surrounding a building or structure, and 762  
includes activities to inspect, detect, or prevent vermin 763  
infestation of a building or structure. 764

(KK) "Physical fitness facility service" means all 765  
transactions by which a membership is granted, maintained, or 766  
renewed, including initiation fees, membership dues, renewal 767  
fees, monthly minimum fees, and other similar fees and dues, by 768  
a physical fitness facility such as an athletic club, health 769  
spa, or gymnasium, which entitles the member to use the facility 770  
for physical exercise. 771

(LL) "Recreation and sports club service" means all 772  
transactions by which a membership is granted, maintained, or 773  
renewed, including initiation fees, membership dues, renewal 774

fees, monthly minimum fees, and other similar fees and dues, by 775  
a recreation and sports club, which entitles the member to use 776  
the facilities of the organization. "Recreation and sports club" 777  
means an organization that has ownership of, or controls or 778  
leases on a continuing, long-term basis, the facilities used by 779  
its members and includes an aviation club, gun or shooting club, 780  
yacht club, card club, swimming club, tennis club, golf club, 781  
country club, riding club, amateur sports club, or similar 782  
organization. 783

(MM) "Livestock" means farm animals commonly raised for 784  
food, food production, or other agricultural purposes, 785  
including, but not limited to, cattle, sheep, goats, swine, 786  
poultry, and captive deer. "Livestock" does not include 787  
invertebrates, amphibians, reptiles, domestic pets, animals for 788  
use in laboratories or for exhibition, or other animals not 789  
commonly raised for food or food production. 790

(NN) "Livestock structure" means a building or structure 791  
used exclusively for the housing, raising, feeding, or 792  
sheltering of livestock, and includes feed storage or handling 793  
structures and structures for livestock waste handling. 794

(OO) "Horticulture" means the growing, cultivation, and 795  
production of flowers, fruits, herbs, vegetables, sod, 796  
mushrooms, and nursery stock. As used in this division, "nursery 797  
stock" has the same meaning as in section 927.51 of the Revised 798  
Code. 799

(PP) "Horticulture structure" means a building or 800  
structure used exclusively for the commercial growing, raising, 801  
or overwintering of horticultural products, and includes the 802  
area used for stocking, storing, and packing horticultural 803  
products when done in conjunction with the production of those 804

products. 805

(QQ) "Newspaper" means an unbound publication bearing a 806  
title or name that is regularly published, at least as 807  
frequently as biweekly, and distributed from a fixed place of 808  
business to the public in a specific geographic area, and that 809  
contains a substantial amount of news matter of international, 810  
national, or local events of interest to the general public. 811

(RR) (1) "Feminine hygiene products" means tampons, panty 812  
liners, menstrual cups, sanitary napkins, and other similar 813  
tangible personal property designed for feminine hygiene in 814  
connection with the human menstrual cycle, but does not include 815  
grooming and hygiene products. 816

(2) "Grooming and hygiene products" means soaps and 817  
cleaning solutions, shampoo, toothpaste, mouthwash, 818  
antiperspirants, and sun tan lotions and screens, regardless of 819  
whether any of these products are over-the-counter drugs. 820

(3) "Over-the-counter drugs" means a drug that contains a 821  
label that identifies the product as a drug as required by 21 822  
C.F.R. 201.66, which label includes a drug facts panel or a 823  
statement of the active ingredients with a list of those 824  
ingredients contained in the compound, substance, or 825  
preparation. 826

(SS) (1) "Lease" or "rental" means any transfer of the 827  
possession or control of tangible personal property for a fixed 828  
or indefinite term, for consideration. "Lease" or "rental" 829  
includes future options to purchase or extend, and agreements 830  
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 831  
trailers where the amount of consideration may be increased or 832  
decreased by reference to the amount realized upon the sale or 833

disposition of the property. "Lease" or "rental" does not 834  
include: 835

(a) A transfer of possession or control of tangible 836  
personal property under a security agreement or a deferred 837  
payment plan that requires the transfer of title upon completion 838  
of the required payments; 839

(b) A transfer of possession or control of tangible 840  
personal property under an agreement that requires the transfer 841  
of title upon completion of required payments and payment of an 842  
option price that does not exceed the greater of one hundred 843  
dollars or one per cent of the total required payments; 844

(c) Providing tangible personal property along with an 845  
operator for a fixed or indefinite period of time, if the 846  
operator is necessary for the property to perform as designed. 847  
For purposes of this division, the operator must do more than 848  
maintain, inspect, or set up the tangible personal property. 849

(2) "Lease" and "rental," as defined in division (SS) of 850  
this section, shall not apply to leases or rentals that exist 851  
before June 26, 2003. 852

(3) "Lease" and "rental" have the same meaning as in 853  
division (SS) (1) of this section regardless of whether a 854  
transaction is characterized as a lease or rental under 855  
generally accepted accounting principles, the Internal Revenue 856  
Code, Title XIII of the Revised Code, or other federal, state, 857  
or local laws. 858

(TT) "Mobile telecommunications service" has the same 859  
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 860  
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 861  
amended, and, on and after August 1, 2003, includes related fees 862

and ancillary services, including universal service fees, 863  
detailed billing service, directory assistance, service 864  
initiation, voice mail service, and vertical services, such as 865  
caller ID and three-way calling. 866

(UU) "Certified service provider" has the same meaning as 867  
in section 5740.01 of the Revised Code. 868

(VV) "Satellite broadcasting service" means the 869  
distribution or broadcasting of programming or services by 870  
satellite directly to the subscriber's receiving equipment 871  
without the use of ground receiving or distribution equipment, 872  
except the subscriber's receiving equipment or equipment used in 873  
the uplink process to the satellite, and includes all service 874  
and rental charges, premium channels or other special services, 875  
installation and repair service charges, and any other charges 876  
having any connection with the provision of the satellite 877  
broadcasting service. 878

(WW) "Tangible personal property" means personal property 879  
that can be seen, weighed, measured, felt, or touched, or that 880  
is in any other manner perceptible to the senses. For purposes 881  
of this chapter and Chapter 5741. of the Revised Code, "tangible 882  
personal property" includes motor vehicles, electricity, water, 883  
gas, steam, and prewritten computer software. 884

(XX) "Municipal gas utility" means a municipal corporation 885  
that owns or operates a system for the distribution of natural 886  
gas. 887

(YY) "Computer" means an electronic device that accepts 888  
information in digital or similar form and manipulates it for a 889  
result based on a sequence of instructions. 890

(ZZ) "Computer software" means a set of coded instructions 891

designed to cause a computer or automatic data processing 892  
equipment to perform a task. 893

(AAA) "Delivered electronically" means delivery of 894  
computer software from the seller to the purchaser by means 895  
other than tangible storage media. 896

(BBB) "Prewritten computer software" means computer 897  
software, including prewritten upgrades, that is not designed 898  
and developed by the author or other creator to the 899  
specifications of a specific purchaser. The combining of two or 900  
more prewritten computer software programs or prewritten 901  
portions thereof does not cause the combination to be other than 902  
prewritten computer software. "Prewritten computer software" 903  
includes software designed and developed by the author or other 904  
creator to the specifications of a specific purchaser when it is 905  
sold to a person other than the purchaser. If a person modifies 906  
or enhances computer software of which the person is not the 907  
author or creator, the person shall be deemed to be the author 908  
or creator only of such person's modifications or enhancements. 909  
Prewritten computer software or a prewritten portion thereof 910  
that is modified or enhanced to any degree, where such 911  
modification or enhancement is designed and developed to the 912  
specifications of a specific purchaser, remains prewritten 913  
computer software; provided, however, that where there is a 914  
reasonable, separately stated charge or an invoice or other 915  
statement of the price given to the purchaser for the 916  
modification or enhancement, the modification or enhancement 917  
shall not constitute prewritten computer software. 918

(CCC) (1) "Food" means substances, whether in liquid, 919  
concentrated, solid, frozen, dried, or dehydrated form, that are 920  
sold for ingestion or chewing by humans and are consumed for 921

their taste or nutritional value. "Food" does not include 922  
alcoholic beverages, dietary supplements, soft drinks, or 923  
tobacco. 924

(2) As used in division (CCC) (1) of this section: 925

(a) "Alcoholic beverages" means beverages that are 926  
suitable for human consumption and contain one-half of one per 927  
cent or more of alcohol by volume. 928

(b) "Dietary supplements" means any product, other than 929  
tobacco, that is intended to supplement the diet and that is 930  
intended for ingestion in tablet, capsule, powder, softgel, 931  
gelcap, or liquid form, or, if not intended for ingestion in 932  
such a form, is not represented as conventional food for use as 933  
a sole item of a meal or of the diet; that is required to be 934  
labeled as a dietary supplement, identifiable by the "supplement 935  
facts" box found on the label, as required by 21 C.F.R. 101.36; 936  
and that contains one or more of the following dietary 937  
ingredients: 938

(i) A vitamin; 939

(ii) A mineral; 940

(iii) An herb or other botanical; 941

(iv) An amino acid; 942

(v) A dietary substance for use by humans to supplement 943  
the diet by increasing the total dietary intake; 944

(vi) A concentrate, metabolite, constituent, extract, or 945  
combination of any ingredient described in divisions (CCC) (2) (b) 946  
(i) to (v) of this section. 947

(c) "Soft drinks" means nonalcoholic beverages that 948

contain natural or artificial sweeteners. "Soft drinks" does not 949  
include beverages that contain milk or milk products, soy, rice, 950  
or similar milk substitutes, or that contains greater than fifty 951  
per cent vegetable or fruit juice by volume. 952

(d) "Tobacco" means cigarettes, cigars, chewing or pipe 953  
tobacco, or any other item that contains tobacco. 954

(DDD) "Drug" means a compound, substance, or preparation, 955  
and any component of a compound, substance, or preparation, 956  
other than food, dietary supplements, or alcoholic beverages 957  
that is recognized in the official United States pharmacopoeia, 958  
official homeopathic pharmacopoeia of the United States, or 959  
official national formulary, and supplements to them; is 960  
intended for use in the diagnosis, cure, mitigation, treatment, 961  
or prevention of disease; or is intended to affect the structure 962  
or any function of the body. 963

(EEE) "Prescription" means an order, formula, or recipe 964  
issued in any form of oral, written, electronic, or other means 965  
of transmission by a duly licensed practitioner authorized by 966  
the laws of this state to issue a prescription. 967

(FFF) "Durable medical equipment" means equipment, 968  
including repair and replacement parts for such equipment, that 969  
can withstand repeated use, is primarily and customarily used to 970  
serve a medical purpose, generally is not useful to a person in 971  
the absence of illness or injury, and is not worn in or on the 972  
body. "Durable medical equipment" does not include mobility 973  
enhancing equipment. 974

(GGG) "Mobility enhancing equipment" means equipment, 975  
including repair and replacement parts for such equipment, that 976  
is primarily and customarily used to provide or increase the 977

ability to move from one place to another and is appropriate for 978  
use either in a home or a motor vehicle, that is not generally 979  
used by persons with normal mobility, and that does not include 980  
any motor vehicle or equipment on a motor vehicle normally 981  
provided by a motor vehicle manufacturer. "Mobility enhancing 982  
equipment" does not include durable medical equipment. 983

(HHH) "Prosthetic device" means a replacement, corrective, 984  
or supportive device, including repair and replacement parts for 985  
the device, worn on or in the human body to artificially replace 986  
a missing portion of the body, prevent or correct physical 987  
deformity or malfunction, or support a weak or deformed portion 988  
of the body. As used in this division, before July 1, 2019, 989  
"prosthetic device" does not include corrective eyeglasses, 990  
contact lenses, or dental prosthesis. On or after July 1, 2019, 991  
"prosthetic device" does not include dental prosthesis but does 992  
include corrective eyeglasses or contact lenses. 993

(III) (1) "Fractional aircraft ownership program" means a 994  
program in which persons within an affiliated group sell and 995  
manage fractional ownership program aircraft, provided that at 996  
least one hundred airworthy aircraft are operated in the program 997  
and the program meets all of the following criteria: 998

(a) Management services are provided by at least one 999  
program manager within an affiliated group on behalf of the 1000  
fractional owners. 1001

(b) Each program aircraft is owned or possessed by at 1002  
least one fractional owner. 1003

(c) Each fractional owner owns or possesses at least a 1004  
one-sixteenth interest in at least one fixed-wing program 1005  
aircraft. 1006

(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners. 1007  
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(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program. 1009  
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(2) As used in division (III)(1) of this section: 1012

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section. 1013  
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(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (III)(1)(e) of this section. 1015  
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(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (III)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program. 1019  
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(d) "Management services" means administrative and aviation support services furnished under a fractional aircraft ownership program in accordance with a management services agreement under division (III)(1)(e) of this section, and offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of safety guidelines; the coordination of the scheduling of the program aircraft and crews; program aircraft maintenance; program aircraft insurance; crew training for crews employed, furnished, or contracted by the program manager or the 1026  
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fractional owner; the satisfaction of record-keeping 1036  
requirements; and the development and use of an operations 1037  
manual and a maintenance manual for the fractional aircraft 1038  
ownership program. 1039

(e) "Program manager" means the person that offers 1040  
management services to fractional owners pursuant to a 1041  
management services agreement under division (III)(1)(e) of this 1042  
section. 1043

(JJJ) "Electronic publishing" means providing access to 1044  
one or more of the following primarily for business customers, 1045  
including the federal government or a state government or a 1046  
political subdivision thereof, to conduct research: news; 1047  
business, financial, legal, consumer, or credit materials; 1048  
editorials, columns, reader commentary, or features; photos or 1049  
images; archival or research material; legal notices, identity 1050  
verification, or public records; scientific, educational, 1051  
instructional, technical, professional, trade, or other literary 1052  
materials; or other similar information which has been gathered 1053  
and made available by the provider to the consumer in an 1054  
electronic format. Providing electronic publishing includes the 1055  
functions necessary for the acquisition, formatting, editing, 1056  
storage, and dissemination of data or information that is the 1057  
subject of a sale. 1058

(KKK) "Medicaid health insuring corporation" means a 1059  
health insuring corporation that holds a certificate of 1060  
authority under Chapter 1751. of the Revised Code and is under 1061  
contract with the department of medicaid pursuant to section 1062  
5167.10 of the Revised Code. 1063

(LLL) "Managed care premium" means any premium, 1064  
capitation, or other payment a medicaid health insuring 1065

corporation receives for providing or arranging for the 1066  
provision of health care services to its members or enrollees 1067  
residing in this state. 1068

(MMM) "Captive deer" means deer and other cervidae that 1069  
have been legally acquired, or their offspring, that are 1070  
privately owned for agricultural or farming purposes. 1071

(NNN) "Gift card" means a document, card, certificate, or 1072  
other record, whether tangible or intangible, that may be 1073  
redeemed by a consumer for a dollar value when making a purchase 1074  
of tangible personal property or services. 1075

(OOO) "Specified digital product" means an electronically 1076  
transferred digital audiovisual work, digital audio work, or 1077  
digital book. 1078

As used in division (OOO) of this section: 1079

(1) "Digital audiovisual work" means a series of related 1080  
images that, when shown in succession, impart an impression of 1081  
motion, together with accompanying sounds, if any. 1082

(2) "Digital audio work" means a work that results from 1083  
the fixation of a series of musical, spoken, or other sounds, 1084  
including digitized sound files that are downloaded onto a 1085  
device and that may be used to alert the customer with respect 1086  
to a communication. 1087

(3) "Digital book" means a work that is generally 1088  
recognized in the ordinary and usual sense as a book. 1089

(4) "Electronically transferred" means obtained by the 1090  
purchaser by means other than tangible storage media. 1091

(PPP) "Digital advertising services" means providing 1092  
access, by means of telecommunications equipment, to computer 1093

equipment that is used to enter, upload, download, review, 1094  
manipulate, store, add, or delete data for the purpose of 1095  
electronically displaying, delivering, placing, or transferring 1096  
promotional advertisements to potential customers about products 1097  
or services or about industry or business brands. 1098

(QQQ) "Peer-to-peer car sharing program" has the same 1099  
meaning as in section 4516.01 of the Revised Code. 1100

**Sec. 5739.02.** For the purpose of providing revenue with 1101  
which to meet the needs of the state, for the use of the general 1102  
revenue fund of the state, for the purpose of securing a 1103  
thorough and efficient system of common schools throughout the 1104  
state, for the purpose of affording revenues, in addition to 1105  
those from general property taxes, permitted under 1106  
constitutional limitations, and from other sources, for the 1107  
support of local governmental functions, and for the purpose of 1108  
reimbursing the state for the expense of administering this 1109  
chapter, an excise tax is hereby levied on each retail sale made 1110  
in this state. 1111

(A) (1) The tax shall be collected as provided in section 1112  
5739.025 of the Revised Code. The rate of the tax shall be five 1113  
and three-fourths per cent. The tax applies and is collectible 1114  
when the sale is made, regardless of the time when the price is 1115  
paid or delivered. 1116

(2) In the case of the lease or rental, with a fixed term 1117  
of more than thirty days or an indefinite term with a minimum 1118  
period of more than thirty days, of any motor vehicles designed 1119  
by the manufacturer to carry a load of not more than one ton, 1120  
watercraft, outboard motor, or aircraft, or of any tangible 1121  
personal property, other than motor vehicles designed by the 1122  
manufacturer to carry a load of more than one ton, to be used by 1123

the lessee or renter primarily for business purposes, the tax 1124  
shall be collected by the vendor at the time the lease or rental 1125  
is consummated and shall be calculated by the vendor on the 1126  
basis of the total amount to be paid by the lessee or renter 1127  
under the lease agreement. If the total amount of the 1128  
consideration for the lease or rental includes amounts that are 1129  
not calculated at the time the lease or rental is executed, the 1130  
tax shall be calculated and collected by the vendor at the time 1131  
such amounts are billed to the lessee or renter. In the case of 1132  
an open-end lease or rental, the tax shall be calculated by the 1133  
vendor on the basis of the total amount to be paid during the 1134  
initial fixed term of the lease or rental, and for each 1135  
subsequent renewal period as it comes due. As used in this 1136  
division, "motor vehicle" has the same meaning as in section 1137  
4501.01 of the Revised Code, and "watercraft" includes an 1138  
outdrive unit attached to the watercraft. 1139

A lease with a renewal clause and a termination penalty or 1140  
similar provision that applies if the renewal clause is not 1141  
exercised is presumed to be a sham transaction. In such a case, 1142  
the tax shall be calculated and paid on the basis of the entire 1143  
length of the lease period, including any renewal periods, until 1144  
the termination penalty or similar provision no longer applies. 1145  
The taxpayer shall bear the burden, by a preponderance of the 1146  
evidence, that the transaction or series of transactions is not 1147  
a sham transaction. 1148

(3) Except as provided in division (A) (2) of this section, 1149  
in the case of a sale, the price of which consists in whole or 1150  
in part of the lease or rental of tangible personal property, 1151  
the tax shall be measured by the installments of that lease or 1152  
rental. 1153

(4) In the case of a sale of a physical fitness facility 1154  
service or recreation and sports club service, the price of 1155  
which consists in whole or in part of a membership for the 1156  
receipt of the benefit of the service, the tax applicable to the 1157  
sale shall be measured by the installments thereof. 1158

(B) The tax does not apply to the following: 1159

(1) Sales to the state or any of its political 1160  
subdivisions, or to any other state or its political 1161  
subdivisions if the laws of that state exempt from taxation 1162  
sales made to this state and its political subdivisions; 1163

(2) Sales of food for human consumption off the premises 1164  
where sold; 1165

(3) Sales of food sold to students only in a cafeteria, 1166  
dormitory, fraternity, or sorority maintained in a private, 1167  
public, or parochial school, college, or university; 1168

(4) Sales of newspapers and sales or transfers of 1169  
magazines distributed as controlled circulation publications; 1170

(5) The furnishing, preparing, or serving of meals without 1171  
charge by an employer to an employee provided the employer 1172  
records the meals as part compensation for services performed or 1173  
work done; 1174

(6) (a) Sales of motor fuel upon receipt, use, 1175  
distribution, or sale of which in this state a tax is imposed by 1176  
the law of this state, but this exemption shall not apply to the 1177  
sale of motor fuel on which a refund of the tax is allowable 1178  
under division (A) of section 5735.14 of the Revised Code; and 1179  
the tax commissioner may deduct the amount of tax levied by this 1180  
section applicable to the price of motor fuel when granting a 1181  
refund of motor fuel tax pursuant to division (A) of section 1182

5735.14 of the Revised Code and shall cause the amount deducted 1183  
to be paid into the general revenue fund of this state; 1184

(b) Sales of motor fuel other than that described in 1185  
division (B) (6) (a) of this section and used for powering a 1186  
refrigeration unit on a vehicle other than one used primarily to 1187  
provide comfort to the operator or occupants of the vehicle. 1188

(7) Sales of natural gas by a natural gas company or 1189  
municipal gas utility, of water by a water-works company, or of 1190  
steam by a heating company, if in each case the thing sold is 1191  
delivered to consumers through pipes or conduits, and all sales 1192  
of communications services by a telegraph company, all terms as 1193  
defined in section 5727.01 of the Revised Code, and sales of 1194  
electricity delivered through wires; 1195

(8) Casual sales by a person, or auctioneer employed 1196  
directly by the person to conduct such sales, except as to such 1197  
sales of motor vehicles, watercraft or outboard motors required 1198  
to be titled under section 1548.06 of the Revised Code, 1199  
watercraft documented with the United States coast guard, 1200  
snowmobiles, and all-purpose vehicles as defined in section 1201  
4519.01 of the Revised Code; 1202

(9) (a) Sales of services or tangible personal property, 1203  
other than motor vehicles, mobile homes, and manufactured homes, 1204  
by churches, organizations exempt from taxation under section 1205  
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1206  
organizations operated exclusively for charitable purposes as 1207  
defined in division (B) (12) of this section, provided that the 1208  
number of days on which such tangible personal property or 1209  
services, other than items never subject to the tax, are sold 1210  
does not exceed six in any calendar year, except as otherwise 1211  
provided in division (B) (9) (b) of this section. If the number of 1212

days on which such sales are made exceeds six in any calendar 1213  
year, the church or organization shall be considered to be 1214  
engaged in business and all subsequent sales by it shall be 1215  
subject to the tax. In counting the number of days, all sales by 1216  
groups within a church or within an organization shall be 1217  
considered to be sales of that church or organization. 1218

(b) The limitation on the number of days on which tax- 1219  
exempt sales may be made by a church or organization under 1220  
division (B) (9) (a) of this section does not apply to sales made 1221  
by student clubs and other groups of students of a primary or 1222  
secondary school, or a parent-teacher association, booster 1223  
group, or similar organization that raises money to support or 1224  
fund curricular or extracurricular activities of a primary or 1225  
secondary school. 1226

(c) Divisions (B) (9) (a) and (b) of this section do not 1227  
apply to sales by a noncommercial educational radio or 1228  
television broadcasting station. 1229

(10) Sales not within the taxing power of this state under 1230  
the Constitution or laws of the United States or the 1231  
Constitution of this state; 1232

(11) Except for transactions that are sales under division 1233  
(B) (3) (p) of section 5739.01 of the Revised Code, the 1234  
transportation of persons or property, unless the transportation 1235  
is by a private investigation and security service; 1236

(12) Sales of tangible personal property or services to 1237  
churches, to organizations exempt from taxation under section 1238  
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1239  
nonprofit organizations operated exclusively for charitable 1240  
purposes in this state, no part of the net income of which 1241

inures to the benefit of any private shareholder or individual, 1242  
and no substantial part of the activities of which consists of 1243  
carrying on propaganda or otherwise attempting to influence 1244  
legislation; sales to offices administering one or more homes 1245  
for the aged or one or more hospital facilities exempt under 1246  
section 140.08 of the Revised Code; and sales to organizations 1247  
described in division (D) of section 5709.12 of the Revised 1248  
Code. 1249

"Charitable purposes" means the relief of poverty; the 1250  
improvement of health through the alleviation of illness, 1251  
disease, or injury; the operation of an organization exclusively 1252  
for the provision of professional, laundry, printing, and 1253  
purchasing services to hospitals or charitable institutions; the 1254  
operation of a home for the aged, as defined in section 5701.13 1255  
of the Revised Code; the operation of a radio or television 1256  
broadcasting station that is licensed by the federal 1257  
communications commission as a noncommercial educational radio 1258  
or television station; the operation of a nonprofit animal 1259  
adoption service or a county humane society; the promotion of 1260  
education by an institution of learning that maintains a faculty 1261  
of qualified instructors, teaches regular continuous courses of 1262  
study, and confers a recognized diploma upon completion of a 1263  
specific curriculum; the operation of a parent-teacher 1264  
association, booster group, or similar organization primarily 1265  
engaged in the promotion and support of the curricular or 1266  
extracurricular activities of a primary or secondary school; the 1267  
operation of a community or area center in which presentations 1268  
in music, dramatics, the arts, and related fields are made in 1269  
order to foster public interest and education therein; the 1270  
production of performances in music, dramatics, and the arts; or 1271  
the promotion of education by an organization engaged in 1272

carrying on research in, or the dissemination of, scientific and 1273  
technological knowledge and information primarily for the 1274  
public. 1275

Nothing in this division shall be deemed to exempt sales 1276  
to any organization for use in the operation or carrying on of a 1277  
trade or business, or sales to a home for the aged for use in 1278  
the operation of independent living facilities as defined in 1279  
division (A) of section 5709.12 of the Revised Code. 1280

(13) Building and construction materials and services sold 1281  
to construction contractors for incorporation into a structure 1282  
or improvement to real property under a construction contract 1283  
with this state or a political subdivision of this state, or 1284  
with the United States government or any of its agencies; 1285  
building and construction materials and services sold to 1286  
construction contractors for incorporation into a structure or 1287  
improvement to real property that are accepted for ownership by 1288  
this state or any of its political subdivisions, or by the 1289  
United States government or any of its agencies at the time of 1290  
completion of the structures or improvements; building and 1291  
construction materials sold to construction contractors for 1292  
incorporation into a horticulture structure or livestock 1293  
structure for a person engaged in the business of horticulture 1294  
or producing livestock; building materials and services sold to 1295  
a construction contractor for incorporation into a house of 1296  
public worship or religious education, or a building used 1297  
exclusively for charitable purposes under a construction 1298  
contract with an organization whose purpose is as described in 1299  
division (B) (12) of this section; building materials and 1300  
services sold to a construction contractor for incorporation 1301  
into a building under a construction contract with an 1302  
organization exempt from taxation under section 501(c) (3) of the 1303

Internal Revenue Code of 1986 when the building is to be used 1304  
exclusively for the organization's exempt purposes; building and 1305  
construction materials sold for incorporation into the original 1306  
construction of a sports facility under section 307.696 of the 1307  
Revised Code; building and construction materials and services 1308  
sold to a construction contractor for incorporation into real 1309  
property outside this state if such materials and services, when 1310  
sold to a construction contractor in the state in which the real 1311  
property is located for incorporation into real property in that 1312  
state, would be exempt from a tax on sales levied by that state; 1313  
building and construction materials for incorporation into a 1314  
transportation facility pursuant to a public-private agreement 1315  
entered into under sections 5501.70 to 5501.83 of the Revised 1316  
Code; and, until one calendar year after the construction of a 1317  
convention center that qualifies for property tax exemption 1318  
under section 5709.084 of the Revised Code is completed, 1319  
building and construction materials and services sold to a 1320  
construction contractor for incorporation into the real property 1321  
comprising that convention center; 1322

(14) Sales of ships or vessels or rail rolling stock used 1323  
or to be used principally in interstate or foreign commerce, and 1324  
repairs, alterations, fuel, and lubricants for such ships or 1325  
vessels or rail rolling stock; 1326

(15) Sales to persons primarily engaged in any of the 1327  
activities mentioned in division (B) (42) (a), (g), or (h) of this 1328  
section, to persons engaged in making retail sales, or to 1329  
persons who purchase for sale from a manufacturer tangible 1330  
personal property that was produced by the manufacturer in 1331  
accordance with specific designs provided by the purchaser, of 1332  
packages, including material, labels, and parts for packages, 1333  
and of machinery, equipment, and material for use primarily in 1334

packaging tangible personal property produced for sale, 1335  
including any machinery, equipment, and supplies used to make 1336  
labels or packages, to prepare packages or products for 1337  
labeling, or to label packages or products, by or on the order 1338  
of the person doing the packaging, or sold at retail. "Packages" 1339  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1340  
bindings, wrappings, and other similar devices and containers, 1341  
but does not include motor vehicles or bulk tanks, trailers, or 1342  
similar devices attached to motor vehicles. "Packaging" means 1343  
placing in a package. Division (B) (15) of this section does not 1344  
apply to persons engaged in highway transportation for hire. 1345

(16) Sales of food to persons using supplemental nutrition 1346  
assistance program benefits to purchase the food. As used in 1347  
this division, "food" has the same meaning as in 7 U.S.C. 2012 1348  
and federal regulations adopted pursuant to the Food and 1349  
Nutrition Act of 2008. 1350

(17) Sales to persons engaged in farming, agriculture, 1351  
horticulture, or floriculture, of tangible personal property for 1352  
use or consumption primarily in the production by farming, 1353  
agriculture, horticulture, or floriculture of other tangible 1354  
personal property for use or consumption primarily in the 1355  
production of tangible personal property for sale by farming, 1356  
agriculture, horticulture, or floriculture; or material and 1357  
parts for incorporation into any such tangible personal property 1358  
for use or consumption in production; and of tangible personal 1359  
property for such use or consumption in the conditioning or 1360  
holding of products produced by and for such use, consumption, 1361  
or sale by persons engaged in farming, agriculture, 1362  
horticulture, or floriculture, except where such property is 1363  
incorporated into real property; 1364

(18) Sales of drugs for a human being that may be	1365
dispensed only pursuant to a prescription; insulin as recognized	1366
in the official United States pharmacopoeia; urine and blood	1367
testing materials when used by diabetics or persons with	1368
hypoglycemia to test for glucose or acetone; hypodermic syringes	1369
and needles when used by diabetics for insulin injections;	1370
epoetin alfa when purchased for use in the treatment of persons	1371
with medical disease; hospital beds when purchased by hospitals,	1372
nursing homes, or other medical facilities; and medical oxygen	1373
and medical oxygen-dispensing equipment when purchased by	1374
hospitals, nursing homes, or other medical facilities;	1375
(19) Sales of prosthetic devices, durable medical	1376
equipment for home use, or mobility enhancing equipment, when	1377
made pursuant to a prescription and when such devices or	1378
equipment are for use by a human being.	1379
(20) Sales of emergency and fire protection vehicles and	1380
equipment to nonprofit organizations for use solely in providing	1381
fire protection and emergency services, including trauma care	1382
and emergency medical services, for political subdivisions of	1383
the state;	1384
(21) Sales of tangible personal property manufactured in	1385
this state, if sold by the manufacturer in this state to a	1386
retailer for use in the retail business of the retailer outside	1387
of this state and if possession is taken from the manufacturer	1388
by the purchaser within this state for the sole purpose of	1389
immediately removing the same from this state in a vehicle owned	1390
by the purchaser;	1391
(22) Sales of services provided by the state or any of its	1392
political subdivisions, agencies, instrumentalities,	1393
institutions, or authorities, or by governmental entities of the	1394

state or any of its political subdivisions, agencies,	1395
instrumentalities, institutions, or authorities;	1396
(23) Sales of motor vehicles to nonresidents of this state	1397
under the circumstances described in division (B) of section	1398
5739.029 of the Revised Code;	1399
(24) Sales to persons engaged in the preparation of eggs	1400
for sale of tangible personal property used or consumed directly	1401
in such preparation, including such tangible personal property	1402
used for cleaning, sanitizing, preserving, grading, sorting, and	1403
classifying by size; packages, including material and parts for	1404
packages, and machinery, equipment, and material for use in	1405
packaging eggs for sale; and handling and transportation	1406
equipment and parts therefor, except motor vehicles licensed to	1407
operate on public highways, used in intraplant or interplant	1408
transfers or shipment of eggs in the process of preparation for	1409
sale, when the plant or plants within or between which such	1410
transfers or shipments occur are operated by the same person.	1411
"Packages" includes containers, cases, baskets, flats, fillers,	1412
filler flats, cartons, closure materials, labels, and labeling	1413
materials, and "packaging" means placing therein.	1414
(25) (a) Sales of water to a consumer for residential use;	1415
(b) Sales of water by a nonprofit corporation engaged	1416
exclusively in the treatment, distribution, and sale of water to	1417
consumers, if such water is delivered to consumers through pipes	1418
or tubing.	1419
(26) Fees charged for inspection or reinspection of motor	1420
vehicles under section 3704.14 of the Revised Code;	1421
(27) Sales to persons licensed to conduct a food service	1422
operation pursuant to section 3717.43 of the Revised Code, of	1423

tangible personal property primarily used directly for the	1424
following:	1425
(a) To prepare food for human consumption for sale;	1426
(b) To preserve food that has been or will be prepared for	1427
human consumption for sale by the food service operator, not	1428
including tangible personal property used to display food for	1429
selection by the consumer;	1430
(c) To clean tangible personal property used to prepare or	1431
serve food for human consumption for sale.	1432
(28) Sales of animals by nonprofit animal adoption	1433
services or county humane societies;	1434
(29) Sales of services to a corporation described in	1435
division (A) of section 5709.72 of the Revised Code, and sales	1436
of tangible personal property that qualifies for exemption from	1437
taxation under section 5709.72 of the Revised Code;	1438
(30) Sales and installation of agricultural land tile, as	1439
defined in division (B) (5) (a) of section 5739.01 of the Revised	1440
Code;	1441
(31) Sales and erection or installation of portable grain	1442
bins, as defined in division (B) (5) (b) of section 5739.01 of the	1443
Revised Code;	1444
(32) The sale, lease, repair, and maintenance of, parts	1445
for, or items attached to or incorporated in, motor vehicles	1446
that are primarily used for transporting tangible personal	1447
property belonging to others by a person engaged in highway	1448
transportation for hire, except for packages and packaging used	1449
for the transportation of tangible personal property;	1450
(33) Sales to the state headquarters of any veterans'	1451

organization in this state that is either incorporated and 1452  
issued a charter by the congress of the United States or is 1453  
recognized by the United States veterans administration, for use 1454  
by the headquarters; 1455

(34) Sales to a telecommunications service vendor, mobile 1456  
telecommunications service vendor, or satellite broadcasting 1457  
service vendor of tangible personal property and services used 1458  
directly and primarily in transmitting, receiving, switching, or 1459  
recording any interactive, one- or two-way electromagnetic 1460  
communications, including voice, image, data, and information, 1461  
through the use of any medium, including, but not limited to, 1462  
poles, wires, cables, switching equipment, computers, and record 1463  
storage devices and media, and component parts for the tangible 1464  
personal property. The exemption provided in this division shall 1465  
be in lieu of all other exemptions under division (B) (42) (a) or 1466  
(n) of this section to which the vendor may otherwise be 1467  
entitled, based upon the use of the thing purchased in providing 1468  
the telecommunications, mobile telecommunications, or satellite 1469  
broadcasting service. 1470

(35) (a) Sales where the purpose of the consumer is to use 1471  
or consume the things transferred in making retail sales and 1472  
consisting of newspaper inserts, catalogues, coupons, flyers, 1473  
gift certificates, or other advertising material that prices and 1474  
describes tangible personal property offered for retail sale. 1475

(b) Sales to direct marketing vendors of preliminary 1476  
materials such as photographs, artwork, and typesetting that 1477  
will be used in printing advertising material; and of printed 1478  
matter that offers free merchandise or chances to win sweepstake 1479  
prizes and that is mailed to potential customers with 1480  
advertising material described in division (B) (35) (a) of this 1481

section;	1482
(c) Sales of equipment such as telephones, computers,	1483
facsimile machines, and similar tangible personal property	1484
primarily used to accept orders for direct marketing retail	1485
sales.	1486
(d) Sales of automatic food vending machines that preserve	1487
food with a shelf life of forty-five days or less by	1488
refrigeration and dispense it to the consumer.	1489
For purposes of division (B) (35) of this section, "direct	1490
marketing" means the method of selling where consumers order	1491
tangible personal property by United States mail, delivery	1492
service, or telecommunication and the vendor delivers or ships	1493
the tangible personal property sold to the consumer from a	1494
warehouse, catalogue distribution center, or similar fulfillment	1495
facility by means of the United States mail, delivery service,	1496
or common carrier.	1497
(36) Sales to a person engaged in the business of	1498
horticulture or producing livestock of materials to be	1499
incorporated into a horticulture structure or livestock	1500
structure;	1501
(37) Sales of personal computers, computer monitors,	1502
computer keyboards, modems, and other peripheral computer	1503
equipment to an individual who is licensed or certified to teach	1504
in an elementary or a secondary school in this state for use by	1505
that individual in preparation for teaching elementary or	1506
secondary school students;	1507
(38) Sales of tangible personal property that is not	1508
required to be registered or licensed under the laws of this	1509
state to a citizen of a foreign nation that is not a citizen of	1510

the United States, provided the property is delivered to a 1511  
person in this state that is not a related member of the 1512  
purchaser, is physically present in this state for the sole 1513  
purpose of temporary storage and package consolidation, and is 1514  
subsequently delivered to the purchaser at a delivery address in 1515  
a foreign nation. As used in division (B)(38) of this section, 1516  
"related member" has the same meaning as in section 5733.042 of 1517  
the Revised Code, and "temporary storage" means the storage of 1518  
tangible personal property for a period of not more than sixty 1519  
days. 1520

(39) Sales of used manufactured homes and used mobile 1521  
homes, as defined in section 5739.0210 of the Revised Code, made 1522  
on or after January 1, 2000; 1523

(40) Sales of tangible personal property and services to a 1524  
provider of electricity used or consumed directly and primarily 1525  
in generating, transmitting, or distributing electricity for use 1526  
by others, including property that is or is to be incorporated 1527  
into and will become a part of the consumer's production, 1528  
transmission, or distribution system and that retains its 1529  
classification as tangible personal property after 1530  
incorporation; fuel or power used in the production, 1531  
transmission, or distribution of electricity; energy conversion 1532  
equipment as defined in section 5727.01 of the Revised Code; and 1533  
tangible personal property and services used in the repair and 1534  
maintenance of the production, transmission, or distribution 1535  
system, including only those motor vehicles as are specially 1536  
designed and equipped for such use. The exemption provided in 1537  
this division shall be in lieu of all other exemptions in 1538  
division (B)(42)(a) or (n) of this section to which a provider 1539  
of electricity may otherwise be entitled based on the use of the 1540  
tangible personal property or service purchased in generating, 1541

transmitting, or distributing electricity.	1542
(41) Sales to a person providing services under division	1543
(B) (3) (p) of section 5739.01 of the Revised Code of tangible	1544
personal property and services used directly and primarily in	1545
providing taxable services under that section.	1546
(42) Sales where the purpose of the purchaser is to do any	1547
of the following:	1548
(a) To incorporate the thing transferred as a material or	1549
a part into tangible personal property to be produced for sale	1550
by manufacturing, assembling, processing, or refining; or to use	1551
or consume the thing transferred directly in producing tangible	1552
personal property for sale by mining, including, without	1553
limitation, the extraction from the earth of all substances that	1554
are classed geologically as minerals, or directly in the	1555
rendition of a public utility service, except that the sales tax	1556
levied by this section shall be collected upon all meals,	1557
drinks, and food for human consumption sold when transporting	1558
persons. This paragraph does not exempt from "retail sale" or	1559
"sales at retail" the sale of tangible personal property that is	1560
to be incorporated into a structure or improvement to real	1561
property.	1562
(b) To hold the thing transferred as security for the	1563
performance of an obligation of the vendor;	1564
(c) To resell, hold, use, or consume the thing transferred	1565
as evidence of a contract of insurance;	1566
(d) To use or consume the thing directly in commercial	1567
fishing;	1568
(e) To incorporate the thing transferred as a material or	1569
a part into, or to use or consume the thing transferred directly	1570

in the production of, magazines distributed as controlled	1571
circulation publications;	1572
(f) To use or consume the thing transferred in the	1573
production and preparation in suitable condition for market and	1574
sale of printed, imprinted, overprinted, lithographic,	1575
multilithic, blueprinted, photostatic, or other productions or	1576
reproductions of written or graphic matter;	1577
(g) To use the thing transferred, as described in section	1578
5739.011 of the Revised Code, primarily in a manufacturing	1579
operation to produce tangible personal property for sale;	1580
(h) To use the benefit of a warranty, maintenance or	1581
service contract, or similar agreement, as described in division	1582
(B) (7) of section 5739.01 of the Revised Code, to repair or	1583
maintain tangible personal property, if all of the property that	1584
is the subject of the warranty, contract, or agreement would not	1585
be subject to the tax imposed by this section;	1586
(i) To use the thing transferred as qualified research and	1587
development equipment;	1588
(j) To use or consume the thing transferred primarily in	1589
storing, transporting, mailing, or otherwise handling purchased	1590
sales inventory in a warehouse, distribution center, or similar	1591
facility when the inventory is primarily distributed outside	1592
this state to retail stores of the person who owns or controls	1593
the warehouse, distribution center, or similar facility, to	1594
retail stores of an affiliated group of which that person is a	1595
member, or by means of direct marketing. This division does not	1596
apply to motor vehicles registered for operation on the public	1597
highways. As used in this division, "affiliated group" has the	1598
same meaning as in division (B) (3) (e) of section 5739.01 of the	1599

Revised Code and "direct marketing" has the same meaning as in 1600  
division (B) (35) of this section. 1601

(k) To use or consume the thing transferred to fulfill a 1602  
contractual obligation incurred by a warrantor pursuant to a 1603  
warranty provided as a part of the price of the tangible 1604  
personal property sold or by a vendor of a warranty, maintenance 1605  
or service contract, or similar agreement the provision of which 1606  
is defined as a sale under division (B) (7) of section 5739.01 of 1607  
the Revised Code; 1608

(l) To use or consume the thing transferred in the 1609  
production of a newspaper for distribution to the public; 1610

(m) To use tangible personal property to perform a service 1611  
listed in division (B) (3) of section 5739.01 of the Revised 1612  
Code, if the property is or is to be permanently transferred to 1613  
the consumer of the service as an integral part of the 1614  
performance of the service; 1615

(n) To use or consume the thing transferred primarily in 1616  
producing tangible personal property for sale by farming, 1617  
agriculture, horticulture, or floriculture. Persons engaged in 1618  
rendering farming, agriculture, horticulture, or floriculture 1619  
services for others are deemed engaged primarily in farming, 1620  
agriculture, horticulture, or floriculture. This paragraph does 1621  
not exempt from "retail sale" or "sales at retail" the sale of 1622  
tangible personal property that is to be incorporated into a 1623  
structure or improvement to real property. 1624

(o) To use or consume the thing transferred in acquiring, 1625  
formatting, editing, storing, and disseminating data or 1626  
information by electronic publishing; 1627

(p) To provide the thing transferred to the owner or 1628

lessee of a motor vehicle that is being repaired or serviced, if 1629  
the thing transferred is a rented motor vehicle and the 1630  
purchaser is reimbursed for the cost of the rented motor vehicle 1631  
by a manufacturer, warrantor, or provider of a maintenance, 1632  
service, or other similar contract or agreement, with respect to 1633  
the motor vehicle that is being repaired or serviced; 1634

(q) To use or consume the thing transferred directly in 1635  
production of crude oil and natural gas for sale. Persons 1636  
engaged in rendering production services for others are deemed 1637  
engaged in production. 1638

As used in division (B) (42) (q) of this section, 1639  
"production" means operations and tangible personal property 1640  
directly used to expose and evaluate an underground reservoir 1641  
that may contain hydrocarbon resources, prepare the wellbore for 1642  
production, and lift and control all substances yielded by the 1643  
reservoir to the surface of the earth. 1644

(i) For the purposes of division (B) (42) (q) of this 1645  
section, the "thing transferred" includes, but is not limited 1646  
to, any of the following: 1647

(I) Services provided in the construction of permanent 1648  
access roads, services provided in the construction of the well 1649  
site, and services provided in the construction of temporary 1650  
impoundments; 1651

(II) Equipment and rigging used for the specific purpose 1652  
of creating with integrity a wellbore pathway to underground 1653  
reservoirs; 1654

(III) Drilling and workover services used to work within a 1655  
subsurface wellbore, and tangible personal property directly 1656  
used in providing such services; 1657

(IV) Casing, tubulars, and float and centralizing equipment;	1658 1659
(V) Trailers to which production equipment is attached;	1660
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	1661 1662 1663
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	1664 1665 1666
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	1667 1668 1669 1670
(IX) Pressure pumping equipment;	1671
(X) Artificial lift systems equipment;	1672
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	1673 1674 1675
(XII) Tangible personal property directly used to control production equipment.	1676 1677
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	1678 1679 1680
(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;	1681 1682 1683
(II) Tangible personal property used primarily in storing,	1684

holding, or delivering solutions or chemicals used in well	1685
stimulation as defined in section 1509.01 of the Revised Code;	1686
(III) Tangible personal property used primarily in	1687
preparing, installing, or reclaiming foundations for drilling or	1688
pumping equipment or well stimulation material tanks;	1689
(IV) Tangible personal property used primarily in	1690
transporting, delivering, or removing equipment to or from the	1691
well site or storing such equipment before its use at the well	1692
site;	1693
(V) Tangible personal property used primarily in gathering	1694
operations occurring off the well site, including gathering	1695
pipelines transporting hydrocarbon gas or liquids away from a	1696
crude oil or natural gas production facility;	1697
(VI) Tangible personal property that is to be incorporated	1698
into a structure or improvement to real property;	1699
(VII) Well site fencing, lighting, or security systems;	1700
(VIII) Communication devices or services;	1701
(IX) Office supplies;	1702
(X) Trailers used as offices or lodging;	1703
(XI) Motor vehicles of any kind;	1704
(XII) Tangible personal property used primarily for the	1705
storage of drilling byproducts and fuel not used for production;	1706
(XIII) Tangible personal property used primarily as a	1707
safety device;	1708
(XIV) Data collection or monitoring devices;	1709
(XV) Access ladders, stairs, or platforms attached to	1710

storage tanks. 1711

The enumeration of tangible personal property in division 1712  
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 1713  
and any tangible personal property not so enumerated shall not 1714  
necessarily be construed to be a "thing transferred" for the 1715  
purposes of division (B) (42) (q) of this section. 1716

The commissioner shall adopt and promulgate rules under 1717  
sections 119.01 to 119.13 of the Revised Code that the 1718  
commissioner deems necessary to administer division (B) (42) (q) 1719  
of this section. 1720

As used in division (B) (42) of this section, "thing" 1721  
includes all transactions included in divisions (B) (3) (a), (b), 1722  
and (e) of section 5739.01 of the Revised Code. 1723

(43) Sales conducted through a coin operated device that 1724  
activates vacuum equipment or equipment that dispenses water, 1725  
whether or not in combination with soap or other cleaning agents 1726  
or wax, to the consumer for the consumer's use on the premises 1727  
in washing, cleaning, or waxing a motor vehicle, provided no 1728  
other personal property or personal service is provided as part 1729  
of the transaction. 1730

(44) Sales of replacement and modification parts for 1731  
engines, airframes, instruments, and interiors in, and paint 1732  
for, aircraft used primarily in a fractional aircraft ownership 1733  
program, and sales of services for the repair, modification, and 1734  
maintenance of such aircraft, and machinery, equipment, and 1735  
supplies primarily used to provide those services. 1736

(45) Sales of telecommunications service that is used 1737  
directly and primarily to perform the functions of a call 1738  
center. As used in this division, "call center" means any 1739

physical location where telephone calls are placed or received 1740  
in high volume for the purpose of making sales, marketing, 1741  
customer service, technical support, or other specialized 1742  
business activity, and that employs at least fifty individuals 1743  
that engage in call center activities on a full-time basis, or 1744  
sufficient individuals to fill fifty full-time equivalent 1745  
positions. 1746

(46) Sales by a telecommunications service vendor of 900 1747  
service to a subscriber. This division does not apply to 1748  
information services. 1749

(47) Sales of value-added non-voice data service. This 1750  
division does not apply to any similar service that is not 1751  
otherwise a telecommunications service. 1752

(48) Sales of feminine hygiene products. 1753

(49) Sales of materials, parts, equipment, or engines used 1754  
in the repair or maintenance of aircraft or avionics systems of 1755  
such aircraft, and sales of repair, remodeling, replacement, or 1756  
maintenance services in this state performed on aircraft or on 1757  
an aircraft's avionics, engine, or component materials or parts. 1758  
As used in division (B) (49) of this section, "aircraft" means 1759  
aircraft of more than six thousand pounds maximum certified 1760  
takeoff weight or used exclusively in general aviation. 1761

(50) Sales of full flight simulators that are used for 1762  
pilot or flight-crew training, sales of repair or replacement 1763  
parts or components, and sales of repair or maintenance services 1764  
for such full flight simulators. "Full flight simulator" means a 1765  
replica of a specific type, or make, model, and series of 1766  
aircraft cockpit. It includes the assemblage of equipment and 1767  
computer programs necessary to represent aircraft operations in 1768

ground and flight conditions, a visual system providing an out- 1769  
of-the-cockpit view, and a system that provides cues at least 1770  
equivalent to those of a three-degree-of-freedom motion system, 1771  
and has the full range of capabilities of the systems installed 1772  
in the device as described in appendices A and B of part 60 of 1773  
chapter 1 of title 14 of the Code of Federal Regulations. 1774

(51) Any transfer or lease of tangible personal property 1775  
between the state and JobsOhio in accordance with section 1776  
4313.02 of the Revised Code. 1777

(52) (a) Sales to a qualifying corporation. 1778

(b) As used in division (B) (52) of this section: 1779

(i) "Qualifying corporation" means a nonprofit corporation 1780  
organized in this state that leases from an eligible county 1781  
land, buildings, structures, fixtures, and improvements to the 1782  
land that are part of or used in a public recreational facility 1783  
used by a major league professional athletic team or a class A 1784  
to class AAA minor league affiliate of a major league 1785  
professional athletic team for a significant portion of the 1786  
team's home schedule, provided the following apply: 1787

(I) The facility is leased from the eligible county 1788  
pursuant to a lease that requires substantially all of the 1789  
revenue from the operation of the business or activity conducted 1790  
by the nonprofit corporation at the facility in excess of 1791  
operating costs, capital expenditures, and reserves to be paid 1792  
to the eligible county at least once per calendar year. 1793

(II) Upon dissolution and liquidation of the nonprofit 1794  
corporation, all of its net assets are distributable to the 1795  
board of commissioners of the eligible county from which the 1796  
corporation leases the facility. 1797

(ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code.	1798 1799
(53) Sales to or by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government of cable service or programming, video service or programming, audio service or programming, or electronically transferred digital audiovisual or audio work. As used in division (B) (53) of this section, "cable service" and "cable service provider" have the same meanings as in section 1332.01 of the Revised Code, and "video service," "video service provider," and "video programming" have the same meanings as in section 1332.21 of the Revised Code.	1800 1801 1802 1803 1804 1805 1806 1807 1808 1809
(54) Sales of a digital audio work electronically transferred for delivery through use of a machine, such as a juke box, that does all of the following:	1810 1811 1812
(a) Accepts direct payments to operate;	1813
(b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (54) (a) of this section;	1814 1815 1816
(c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment.	1817 1818
(55) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each year, beginning in 2018:	1819 1820 1821
(i) An item of clothing, the price of which is seventy-five dollars or less;	1822 1823
(ii) An item of school supplies, the price of which is twenty dollars or less;	1824 1825

(iii) An item of school instructional material, the price	1826
of which is twenty dollars or less.	1827
(b) As used in division (B) (55) of this section:	1828
(i) "Clothing" means all human wearing apparel suitable	1829
for general use. "Clothing" includes, but is not limited to,	1830
aprons, household and shop; athletic supporters; baby receiving	1831
blankets; bathing suits and caps; beach capes and coats; belts	1832
and suspenders; boots; coats and jackets; costumes; diapers,	1833
children and adult, including disposable diapers; earmuffs;	1834
footlets; formal wear; garters and garter belts; girdles; gloves	1835
and mittens for general use; hats and caps; hosiery; insoles for	1836
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	1837
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	1838
sneakers; socks and stockings; steel-toed shoes; underwear;	1839
uniforms, athletic and nonathletic; and wedding apparel.	1840
"Clothing" does not include items purchased for use in a trade	1841
or business; clothing accessories or equipment; protective	1842
equipment; sports or recreational equipment; belt buckles sold	1843
separately; costume masks sold separately; patches and emblems	1844
sold separately; sewing equipment and supplies including, but	1845
not limited to, knitting needles, patterns, pins, scissors,	1846
sewing machines, sewing needles, tape measures, and thimbles;	1847
and sewing materials that become part of "clothing" including,	1848
but not limited to, buttons, fabric, lace, thread, yarn, and	1849
zippers.	1850
(ii) "School supplies" means items commonly used by a	1851
student in a course of study. "School supplies" includes only	1852
the following items: binders; book bags; calculators; cellophane	1853
tape; blackboard chalk; compasses; composition books; crayons;	1854
erasers; folders, expandable, pocket, plastic, and manila; glue,	1855

paste, and paste sticks; highlighters; index cards; index card 1856  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 1857  
loose-leaf ruled notebook paper, copy paper, graph paper, 1858  
tracing paper, manila paper, colored paper, poster board, and 1859  
construction paper; pencil boxes and other school supply boxes; 1860  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 1861  
and writing tablets. "School supplies" does not include any item 1862  
purchased for use in a trade or business. 1863

(iii) "School instructional material" means written 1864  
material commonly used by a student in a course of study as a 1865  
reference and to learn the subject being taught. "School 1866  
instructional material" includes only the following items: 1867  
reference books, reference maps and globes, textbooks, and 1868  
workbooks. "School instructional material" does not include any 1869  
material purchased for use in a trade or business. 1870

(56) (a) Sales of diapers or incontinence underpads sold 1871  
pursuant to a prescription, for the benefit of a medicaid 1872  
recipient with a diagnosis of incontinence, and by a medicaid 1873  
provider that maintains a valid provider agreement under section 1874  
5164.30 of the Revised Code with the department of medicaid, 1875  
provided that the medicaid program covers diapers or 1876  
incontinence underpads as an incontinence garment. 1877

(b) As used in division (B) (56) (a) of this section: 1878

(i) "Diaper" means an absorbent garment worn by humans who 1879  
are incapable of, or have difficulty, controlling their bladder 1880  
or bowel movements. 1881

(ii) "Incontinence underpad" means an absorbent product, 1882  
not worn on the body, designed to protect furniture or other 1883  
tangible personal property from soiling or damage due to human 1884

incontinence.	1885
(57) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any bullion described in section 408(m) (3) (B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee. "Investment coin" means any coin composed primarily of gold, silver, platinum, or palladium.	1886 1887 1888 1889 1890 1891
<u>(58) Documentary services charges imposed pursuant to section 4517.261 or 4781.24 of the Revised Code.</u>	1892 1893
(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.	1894 1895 1896 1897
(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.	1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910
<b>Sec. 5739.03.</b> (A) Except as provided in section 5739.05 or section 5739.051 of the Revised Code, the tax imposed by or pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of	1911 1912 1913

the Revised Code shall be paid by the consumer to the vendor, 1914  
and each vendor shall collect from the consumer, as a trustee 1915  
for the state of Ohio, the full and exact amount of the tax 1916  
payable on each taxable sale, in the manner and at the times 1917  
provided as follows: 1918

(1) If the price is, at or prior to the provision of the 1919  
service or the delivery of possession of the thing sold to the 1920  
consumer, paid in currency passed from hand to hand by the 1921  
consumer or the consumer's agent to the vendor or the vendor's 1922  
agent, the vendor or the vendor's agent shall collect the tax 1923  
with and at the same time as the price; 1924

(2) If the price is otherwise paid or to be paid, the 1925  
vendor or the vendor's agent shall, at or prior to the provision 1926  
of the service or the delivery of possession of the thing sold 1927  
to the consumer, charge the tax imposed by or pursuant to 1928  
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 1929  
Code to the account of the consumer, which amount shall be 1930  
collected by the vendor from the consumer in addition to the 1931  
price. Such sale shall be reported on and the amount of the tax 1932  
applicable thereto shall be remitted with the return for the 1933  
period in which the sale is made, and the amount of the tax 1934  
shall become a legal charge in favor of the vendor and against 1935  
the consumer. 1936

(B) (1) (a) If any sale is claimed to be exempt under 1937  
division (E) of section 5739.01 of the Revised Code or under 1938  
section 5739.02 of the Revised Code, with the exception of 1939  
divisions (B) (1) to (11), (28), (48), ~~or (55)~~, or (58) of 1940  
section 5739.02 of the Revised Code, the consumer must provide 1941  
to the vendor, and the vendor must obtain from the consumer, a 1942  
certificate specifying the reason that the sale is not legally 1943

subject to the tax. The certificate shall be in such form, and 1944  
shall be provided either in a hard copy form or electronic form, 1945  
as the tax commissioner prescribes. 1946

(b) A vendor that obtains a fully completed exemption 1947  
certificate from a consumer is relieved of liability for 1948  
collecting and remitting tax on any sale covered by that 1949  
certificate. If it is determined the exemption was improperly 1950  
claimed, the consumer shall be liable for any tax due on that 1951  
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 1952  
Chapter 5741. of the Revised Code. Relief under this division 1953  
from liability does not apply to any of the following: 1954

(i) A vendor that fraudulently fails to collect tax; 1955

(ii) A vendor that solicits consumers to participate in 1956  
the unlawful claim of an exemption; 1957

(iii) A vendor that accepts an exemption certificate from 1958  
a consumer that claims an exemption based on who purchases or 1959  
who sells property or a service, when the subject of the 1960  
transaction sought to be covered by the exemption certificate is 1961  
actually received by the consumer at a location operated by the 1962  
vendor in this state, and this state has posted to its web site 1963  
an exemption certificate form that clearly and affirmatively 1964  
indicates that the claimed exemption is not available in this 1965  
state; 1966

(iv) A vendor that accepts an exemption certificate from a 1967  
consumer who claims a multiple points of use exemption under 1968  
division (D) of section 5739.033 of the Revised Code, if the 1969  
item purchased is tangible personal property, other than 1970  
prewritten computer software. 1971

(2) The vendor shall maintain records, including exemption 1972

certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request. 1973  
1974

(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section. 1975  
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(4) If no certificate is provided or obtained within ninety days after the date on which such sale is consummated, it shall be presumed that the tax applies. Failure to have so provided or obtained a certificate shall not preclude a vendor, within one hundred twenty days after the tax commissioner gives written notice of intent to levy an assessment, from either establishing that the sale is not subject to the tax, or obtaining, in good faith, a fully completed exemption certificate. 1980  
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(5) Certificates need not be obtained nor provided where the identity of the consumer is such that the transaction is never subject to the tax imposed or where the item of tangible personal property sold or the service provided is never subject to the tax imposed, regardless of use, or when the sale is in interstate commerce. 1989  
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(6) If a transaction is claimed to be exempt under division (B) (13) of section 5739.02 of the Revised Code, the contractor shall obtain certification of the claimed exemption from the contractee. This certification shall be in addition to an exemption certificate provided by the contractor to the vendor. A contractee that provides a certification under this division shall be deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it 1995  
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is subsequently determined that the exemption is not properly 2003  
claimed. The certification shall be in such form as the tax 2004  
commissioner prescribes. 2005

(C) As used in this division, "contractee" means a person 2006  
who seeks to enter or enters into a contract or agreement with a 2007  
contractor or vendor for the construction of real property or 2008  
for the sale and installation onto real property of tangible 2009  
personal property. 2010

Any contractor or vendor may request from any contractee a 2011  
certification of what portion of the property to be transferred 2012  
under such contract or agreement is to be incorporated into the 2013  
realty and what portion will retain its status as tangible 2014  
personal property after installation is completed. The 2015  
contractor or vendor shall request the certification by 2016  
certified mail delivered to the contractee, return receipt 2017  
requested. Upon receipt of such request and prior to entering 2018  
into the contract or agreement, the contractee shall provide to 2019  
the contractor or vendor a certification sufficiently detailed 2020  
to enable the contractor or vendor to ascertain the resulting 2021  
classification of all materials purchased or fabricated by the 2022  
contractor or vendor and transferred to the contractee. This 2023  
requirement applies to a contractee regardless of whether the 2024  
contractee holds a direct payment permit under section 5739.031 2025  
of the Revised Code or provides to the contractor or vendor an 2026  
exemption certificate as provided under this section. 2027

For the purposes of the taxes levied by this chapter and 2028  
Chapter 5741. of the Revised Code, the contractor or vendor may 2029  
in good faith rely on the contractee's certification. 2030  
Notwithstanding division (B) of section 5739.01 of the Revised 2031  
Code, if the tax commissioner determines that certain property 2032

certified by the contractee as tangible personal property 2033  
pursuant to this division is, in fact, real property, the 2034  
contractee shall be considered to be the consumer of all 2035  
materials so incorporated into that real property and shall be 2036  
liable for the applicable tax, and the contractor or vendor 2037  
shall be excused from any liability on those materials. 2038

If a contractee fails to provide such certification upon 2039  
the request of the contractor or vendor, the contractor or 2040  
vendor shall comply with the provisions of this chapter and 2041  
Chapter 5741. of the Revised Code without the certification. If 2042  
the tax commissioner determines that such compliance has been 2043  
performed in good faith and that certain property treated as 2044  
tangible personal property by the contractor or vendor is, in 2045  
fact, real property, the contractee shall be considered to be 2046  
the consumer of all materials so incorporated into that real 2047  
property and shall be liable for the applicable tax, and the 2048  
construction contractor or vendor shall be excused from any 2049  
liability on those materials. 2050

This division does not apply to any contract or agreement 2051  
where the tax commissioner determines as a fact that a 2052  
certification under this division was made solely on the 2053  
decision or advice of the contractor or vendor. 2054

(D) Notwithstanding division (B) of section 5739.01 of the 2055  
Revised Code, whenever the total rate of tax imposed under this 2056  
chapter is increased after the date after a construction 2057  
contract is entered into, the contractee shall reimburse the 2058  
construction contractor for any additional tax paid on tangible 2059  
property consumed or services received pursuant to the contract. 2060

(E) A vendor who files a petition for reassessment 2061  
contesting the assessment of tax on sales for which the vendor 2062

obtained no valid exemption certificates and for which the 2063  
vendor failed to establish that the sales were properly not 2064  
subject to the tax during the one-hundred-twenty-day period 2065  
allowed under division (B) of this section, may present to the 2066  
tax commissioner additional evidence to prove that the sales 2067  
were properly subject to a claim of exception or exemption. The 2068  
vendor shall file such evidence within ninety days of the 2069  
receipt by the vendor of the notice of assessment, except that, 2070  
upon application and for reasonable cause, the period for 2071  
submitting such evidence shall be extended thirty days. 2072

The commissioner shall consider such additional evidence 2073  
in reaching the final determination on the assessment and 2074  
petition for reassessment. 2075

(F) Whenever a vendor refunds the price, minus any 2076  
separately stated delivery charge, of an item of tangible 2077  
personal property on which the tax imposed under this chapter 2078  
has been paid, the vendor shall also refund the amount of tax 2079  
paid, minus the amount of tax attributable to the delivery 2080  
charge. 2081

**Section 2.** That existing sections 5739.01, 5739.02, and 2082  
5739.03 of the Revised Code are hereby repealed. 2083

**Section 3.** The amendment by this act of sections 5739.01 2084  
and 5739.02 of the Revised Code applies on and after the first 2085  
day of the first month beginning after the effective date of 2086  
this section. 2087