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S. B. No. 39

Senator Schaffer

**Cosponsors: Senators Antonio, Brenner, Cirino, Craig, DeMora, Dolan, Gavarone,
Hicks-Hudson, Ingram, Johnson, Kunze, Landis, Manning, Reineke, Reynolds,
Romanchuk, Rulli, Sykes, Wilkin**

A BILL

To amend sections 5739.01 and 5739.02 of the 1
Revised Code to exempt certain baby products 2
from sales and use tax. 3

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

Section 1. That sections 5739.01 and 5739.02 of the 4
Revised Code be amended to read as follows: 5

Sec. 5739.01. As used in this chapter: 6

(A) "Person" includes individuals, receivers, assignees, 7
trustees in bankruptcy, estates, firms, partnerships, 8
associations, joint-stock companies, joint ventures, clubs, 9
societies, corporations, the state and its political 10
subdivisions, and combinations of individuals of any form. 11

(B) "Sale" and "selling" include all of the following 12
transactions for a consideration in any manner, whether 13
absolutely or conditionally, whether for a price or rental, in 14
money or by exchange, and by any means whatsoever: 15

(1) All transactions by which title or possession, or 16

both, of tangible personal property, is or is to be transferred, 17
or a license to use or consume tangible personal property is or 18
is to be granted; 19

(2) All transactions by which lodging by a hotel is or is 20
to be furnished to transient guests; 21

(3) All transactions by which: 22

(a) An item of tangible personal property is or is to be 23
repaired, except property, the purchase of which would not be 24
subject to the tax imposed by section 5739.02 of the Revised 25
Code; 26

(b) An item of tangible personal property is or is to be 27
installed, except property, the purchase of which would not be 28
subject to the tax imposed by section 5739.02 of the Revised 29
Code or property that is or is to be incorporated into and will 30
become a part of a production, transmission, transportation, or 31
distribution system for the delivery of a public utility 32
service; 33

(c) The service of washing, cleaning, waxing, polishing, 34
or painting a motor vehicle is or is to be furnished; 35

(d) Laundry and dry cleaning services are or are to be 36
provided; 37

(e) Automatic data processing, computer services, or 38
electronic information services are or are to be provided for 39
use in business when the true object of the transaction is the 40
receipt by the consumer of automatic data processing, computer 41
services, or electronic information services rather than the 42
receipt of personal or professional services to which automatic 43
data processing, computer services, or electronic information 44
services are incidental or supplemental. Notwithstanding any 45

other provision of this chapter, such transactions that occur 46
between members of an affiliated group are not sales. An 47
"affiliated group" means two or more persons related in such a 48
way that one person owns or controls the business operation of 49
another member of the group. In the case of corporations with 50
stock, one corporation owns or controls another if it owns more 51
than fifty per cent of the other corporation's common stock with 52
voting rights. 53

(f) Telecommunications service, including prepaid calling 54
service, prepaid wireless calling service, or ancillary service, 55
is or is to be provided, but not including coin-operated 56
telephone service; 57

(g) Landscaping and lawn care service is or is to be 58
provided; 59

(h) Private investigation and security service is or is to 60
be provided; 61

(i) Information services or tangible personal property is 62
provided or ordered by means of a nine hundred telephone call; 63

(j) Building maintenance and janitorial service is or is 64
to be provided; 65

(k) Exterminating service is or is to be provided; 66

(l) Physical fitness facility service is or is to be 67
provided; 68

(m) Recreation and sports club service is or is to be 69
provided; 70

(n) Satellite broadcasting service is or is to be 71
provided; 72

(o) Personal care service is or is to be provided to an 73
individual. As used in this division, "personal care service" 74
includes skin care, the application of cosmetics, manicuring, 75
pedicuring, hair removal, tattooing, body piercing, tanning, 76
massage, and other similar services. "Personal care service" 77
does not include a service provided by or on the order of a 78
licensed physician or licensed chiropractor, or the cutting, 79
coloring, or styling of an individual's hair. 80

(p) The transportation of persons by motor vehicle or 81
aircraft is or is to be provided, when the transportation is 82
entirely within this state, except for transportation provided 83
by an ambulance service, by a transit bus, as defined in section 84
5735.01 of the Revised Code, and transportation provided by a 85
citizen of the United States holding a certificate of public 86
convenience and necessity issued under 49 U.S.C. 41102; 87

(q) Motor vehicle towing service is or is to be provided. 88
As used in this division, "motor vehicle towing service" means 89
the towing or conveyance of a wrecked, disabled, or illegally 90
parked motor vehicle. 91

(r) Snow removal service is or is to be provided. As used 92
in this division, "snow removal service" means the removal of 93
snow by any mechanized means, but does not include the providing 94
of such service by a person that has less than five thousand 95
dollars in sales of such service during the calendar year. 96

(s) Electronic publishing service is or is to be provided 97
to a consumer for use in business, except that such transactions 98
occurring between members of an affiliated group, as defined in 99
division (B) (3) (e) of this section, are not sales. 100

(4) All transactions by which printed, imprinted, 101

overprinted, lithographic, multilithic, blueprinted, 102
photostatic, or other productions or reproductions of written or 103
graphic matter are or are to be furnished or transferred; 104

(5) The production or fabrication of tangible personal 105
property for a consideration for consumers who furnish either 106
directly or indirectly the materials used in the production of 107
fabrication work; and include the furnishing, preparing, or 108
serving for a consideration of any tangible personal property 109
consumed on the premises of the person furnishing, preparing, or 110
serving such tangible personal property. Except as provided in 111
section 5739.03 of the Revised Code, a construction contract 112
pursuant to which tangible personal property is or is to be 113
incorporated into a structure or improvement on and becoming a 114
part of real property is not a sale of such tangible personal 115
property. The construction contractor is the consumer of such 116
tangible personal property, provided that the sale and 117
installation of carpeting, the sale and installation of 118
agricultural land tile, the sale and erection or installation of 119
portable grain bins, or the provision of landscaping and lawn 120
care service and the transfer of property as part of such 121
service is never a construction contract. 122

As used in division (B) (5) of this section: 123

(a) "Agricultural land tile" means fired clay or concrete 124
tile, or flexible or rigid perforated plastic pipe or tubing, 125
incorporated or to be incorporated into a subsurface drainage 126
system appurtenant to land used or to be used primarily in 127
production by farming, agriculture, horticulture, or 128
floriculture. The term does not include such materials when they 129
are or are to be incorporated into a drainage system appurtenant 130
to a building or structure even if the building or structure is 131

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| used or to be used in such production. | 132 |
| (b) "Portable grain bin" means a structure that is used or | 133 |
| to be used by a person engaged in farming or agriculture to | 134 |
| shelter the person's grain and that is designed to be | 135 |
| disassembled without significant damage to its component parts. | 136 |
| (6) All transactions in which all of the shares of stock | 137 |
| of a closely held corporation are transferred, or an ownership | 138 |
| interest in a pass-through entity, as defined in section 5733.04 | 139 |
| of the Revised Code, is transferred, if the corporation or pass- | 140 |
| through entity is not engaging in business and its entire assets | 141 |
| consist of boats, planes, motor vehicles, or other tangible | 142 |
| personal property operated primarily for the use and enjoyment | 143 |
| of the shareholders or owners; | 144 |
| (7) All transactions in which a warranty, maintenance or | 145 |
| service contract, or similar agreement by which the vendor of | 146 |
| the warranty, contract, or agreement agrees to repair or | 147 |
| maintain the tangible personal property of the consumer is or is | 148 |
| to be provided; | 149 |
| (8) The transfer of copyrighted motion picture films used | 150 |
| solely for advertising purposes, except that the transfer of | 151 |
| such films for exhibition purposes is not a sale; | 152 |
| (9) All transactions by which tangible personal property | 153 |
| is or is to be stored, except such property that the consumer of | 154 |
| the storage holds for sale in the regular course of business; | 155 |
| (10) All transactions in which "guaranteed auto | 156 |
| protection" is provided whereby a person promises to pay to the | 157 |
| consumer the difference between the amount the consumer receives | 158 |
| from motor vehicle insurance and the amount the consumer owes to | 159 |
| a person holding title to or a lien on the consumer's motor | 160 |

vehicle in the event the consumer's motor vehicle suffers a 161
total loss under the terms of the motor vehicle insurance policy 162
or is stolen and not recovered, if the protection and its price 163
are included in the purchase or lease agreement; 164

(11) (a) Except as provided in division (B) (11) (b) of this 165
section, all transactions by which health care services are paid 166
for, reimbursed, provided, delivered, arranged for, or otherwise 167
made available by a medicaid health insuring corporation 168
pursuant to the corporation's contract with the state. 169

(b) If the centers for medicare and medicaid services of 170
the United States department of health and human services 171
determines that the taxation of transactions described in 172
division (B) (11) (a) of this section constitutes an impermissible 173
health care-related tax under the "Social Security Act," section 174
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 175
the medicaid director shall notify the tax commissioner of that 176
determination. Beginning with the first day of the month 177
following that notification, the transactions described in 178
division (B) (11) (a) of this section are not sales for the 179
purposes of this chapter or Chapter 5741. of the Revised Code. 180
The tax commissioner shall order that the collection of taxes 181
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 182
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 183
for transactions occurring on or after that date. 184

(12) All transactions by which a specified digital product 185
is provided for permanent use or less than permanent use, 186
regardless of whether continued payment is required. 187

Except as provided in this section, "sale" and "selling" 188
do not include transfers of interest in leased property where 189
the original lessee and the terms of the original lease 190

agreement remain unchanged, or professional, insurance, or 191
personal service transactions that involve the transfer of 192
tangible personal property as an inconsequential element, for 193
which no separate charges are made. 194

(C) "Vendor" means the person providing the service or by 195
whom the transfer effected or license given by a sale is or is 196
to be made or given and, for sales described in division (B) (3) 197
(i) of this section, the telecommunications service vendor that 198
provides the nine hundred telephone service; if two or more 199
persons are engaged in business at the same place of business 200
under a single trade name in which all collections on account of 201
sales by each are made, such persons shall constitute a single 202
vendor. 203

Physicians, dentists, hospitals, and veterinarians who are 204
engaged in selling tangible personal property as received from 205
others, such as eyeglasses, mouthwashes, dentifrices, or similar 206
articles, are vendors. Veterinarians who are engaged in 207
transferring to others for a consideration drugs, the dispensing 208
of which does not require an order of a licensed veterinarian or 209
physician under federal law, are vendors. 210

The operator of any peer-to-peer car sharing program shall 211
be considered to be the vendor. 212

(D) (1) "Consumer" means the person for whom the service is 213
provided, to whom the transfer effected or license given by a 214
sale is or is to be made or given, to whom the service described 215
in division (B) (3) (f) or (i) of this section is charged, or to 216
whom the admission is granted. 217

(2) Physicians, dentists, hospitals, and blood banks 218
operated by nonprofit institutions and persons licensed to 219

practice veterinary medicine, surgery, and dentistry are 220
consumers of all tangible personal property and services 221
purchased by them in connection with the practice of medicine, 222
dentistry, the rendition of hospital or blood bank service, or 223
the practice of veterinary medicine, surgery, and dentistry. In 224
addition to being consumers of drugs administered by them or by 225
their assistants according to their direction, veterinarians 226
also are consumers of drugs that under federal law may be 227
dispensed only by or upon the order of a licensed veterinarian 228
or physician, when transferred by them to others for a 229
consideration to provide treatment to animals as directed by the 230
veterinarian. 231

(3) A person who performs a facility management, or 232
similar service contract for a contractee is a consumer of all 233
tangible personal property and services purchased for use in 234
connection with the performance of such contract, regardless of 235
whether title to any such property vests in the contractee. The 236
purchase of such property and services is not subject to the 237
exception for resale under division (E) of this section. 238

(4) (a) In the case of a person who purchases printed 239
matter for the purpose of distributing it or having it 240
distributed to the public or to a designated segment of the 241
public, free of charge, that person is the consumer of that 242
printed matter, and the purchase of that printed matter for that 243
purpose is a sale. 244

(b) In the case of a person who produces, rather than 245
purchases, printed matter for the purpose of distributing it or 246
having it distributed to the public or to a designated segment 247
of the public, free of charge, that person is the consumer of 248
all tangible personal property and services purchased for use or 249

consumption in the production of that printed matter. That 250
person is not entitled to claim exemption under division (B) (42) 251
(f) of section 5739.02 of the Revised Code for any material 252
incorporated into the printed matter or any equipment, supplies, 253
or services primarily used to produce the printed matter. 254

(c) The distribution of printed matter to the public or to 255
a designated segment of the public, free of charge, is not a 256
sale to the members of the public to whom the printed matter is 257
distributed or to any persons who purchase space in the printed 258
matter for advertising or other purposes. 259

(5) A person who makes sales of any of the services listed 260
in division (B) (3) of this section is the consumer of any 261
tangible personal property used in performing the service. The 262
purchase of that property is not subject to the resale exception 263
under division (E) of this section. 264

(6) A person who engages in highway transportation for 265
hire is the consumer of all packaging materials purchased by 266
that person and used in performing the service, except for 267
packaging materials sold by such person in a transaction 268
separate from the service. 269

(7) In the case of a transaction for health care services 270
under division (B) (11) of this section, a medicaid health 271
insuring corporation is the consumer of such services. The 272
purchase of such services by a medicaid health insuring 273
corporation is not subject to the exception for resale under 274
division (E) of this section or to the exemptions provided under 275
divisions (B) (12), (18), (19), and (22) of section 5739.02 of 276
the Revised Code. 277

(E) "Retail sale" and "sales at retail" include all sales, 278

except those in which the purpose of the consumer is to resell 279
the thing transferred or benefit of the service provided, by a 280
person engaging in business, in the form in which the same is, 281
or is to be, received by the person. 282

(F) "Business" includes any activity engaged in by any 283
person with the object of gain, benefit, or advantage, either 284
direct or indirect. "Business" does not include the activity of 285
a person in managing and investing the person's own funds. 286

(G) "Engaging in business" means commencing, conducting, 287
or continuing in business, and liquidating a business when the 288
liquidator thereof holds itself out to the public as conducting 289
such business. Making a casual sale is not engaging in business. 290

(H) (1) (a) "Price," except as provided in divisions (H) (2), 291
(3), and (4) of this section, means the total amount of 292
consideration, including cash, credit, property, and services, 293
for which tangible personal property or services are sold, 294
leased, or rented, valued in money, whether received in money or 295
otherwise, without any deduction for any of the following: 296

(i) The vendor's cost of the property sold; 297

(ii) The cost of materials used, labor or service costs, 298
interest, losses, all costs of transportation to the vendor, all 299
taxes imposed on the vendor, including the tax imposed under 300
Chapter 5751. of the Revised Code, and any other expense of the 301
vendor; 302

(iii) Charges by the vendor for any services necessary to 303
complete the sale; 304

(iv) Delivery charges. As used in this division, "delivery 305
charges" means charges by the vendor for preparation and 306
delivery to a location designated by the consumer of tangible 307

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| personal property or a service, including transportation, | 308 |
| shipping, postage, handling, crating, and packing. | 309 |
| (v) Installation charges; | 310 |
| (vi) Credit for any trade-in. | 311 |
| (b) "Price" includes consideration received by the vendor | 312 |
| from a third party, if the vendor actually receives the | 313 |
| consideration from a party other than the consumer, and the | 314 |
| consideration is directly related to a price reduction or | 315 |
| discount on the sale; the vendor has an obligation to pass the | 316 |
| price reduction or discount through to the consumer; the amount | 317 |
| of the consideration attributable to the sale is fixed and | 318 |
| determinable by the vendor at the time of the sale of the item | 319 |
| to the consumer; and one of the following criteria is met: | 320 |
| (i) The consumer presents a coupon, certificate, or other | 321 |
| document to the vendor to claim a price reduction or discount | 322 |
| where the coupon, certificate, or document is authorized, | 323 |
| distributed, or granted by a third party with the understanding | 324 |
| that the third party will reimburse any vendor to whom the | 325 |
| coupon, certificate, or document is presented; | 326 |
| (ii) The consumer identifies the consumer's self to the | 327 |
| seller as a member of a group or organization entitled to a | 328 |
| price reduction or discount. A preferred customer card that is | 329 |
| available to any patron does not constitute membership in such a | 330 |
| group or organization. | 331 |
| (iii) The price reduction or discount is identified as a | 332 |
| third party price reduction or discount on the invoice received | 333 |
| by the consumer, or on a coupon, certificate, or other document | 334 |
| presented by the consumer. | 335 |
| (c) "Price" does not include any of the following: | 336 |

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| (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale; | 337 338 339 |
| (ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; | 340 341 342 343 |
| (iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated. | 344 345 346 347 348 349 |
| (iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state. | 350 351 352 353 354 |
| (v) The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation from a third party to cover all or part of the gift card value. For the purposes of this division, a gift card is not sold by a vendor or purchased by a consumer if it is distributed pursuant to an awards, loyalty, or promotional program. Past and present purchases of tangible personal property or services by the consumer shall not be treated as consideration exchanged for a gift card. | 355 356 357 358 359 360 361 362 363 364 365 |

(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

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| credit. | 396 |
| (J) "Place of business" means any location at which a person engages in business. | 397 398 |
| (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. | 399 400 401 402 403 404 |
| (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. | 405 406 407 408 409 410 411 412 413 414 415 |
| (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. | 416 417 418 419 420 421 422 |
| (N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty | 423 424 |

consecutive days. 425

(O) "Making retail sales" means the effecting of 426
transactions wherein one party is obligated to pay the price and 427
the other party is obligated to provide a service or to transfer 428
title to or possession of the item sold. "Making retail sales" 429
does not include the preliminary acts of promoting or soliciting 430
the retail sales, other than the distribution of printed matter 431
which displays or describes and prices the item offered for 432
sale, nor does it include delivery of a predetermined quantity 433
of tangible personal property or transportation of property or 434
personnel to or from a place where a service is performed. 435

(P) "Used directly in the rendition of a public utility 436
service" means that property that is to be incorporated into and 437
will become a part of the consumer's production, transmission, 438
transportation, or distribution system and that retains its 439
classification as tangible personal property after such 440
incorporation; fuel or power used in the production, 441
transmission, transportation, or distribution system; and 442
tangible personal property used in the repair and maintenance of 443
the production, transmission, transportation, or distribution 444
system, including only such motor vehicles as are specially 445
designed and equipped for such use. Tangible personal property 446
and services used primarily in providing highway transportation 447
for hire are not used directly in the rendition of a public 448
utility service. In this definition, "public utility" includes a 449
citizen of the United States holding, and required to hold, a 450
certificate of public convenience and necessity issued under 49 451
U.S.C. 41102. 452

(Q) "Refining" means removing or separating a desirable 453
product from raw or contaminated materials by distillation or 454

physical, mechanical, or chemical processes. 455

(R) "Assembly" and "assembling" mean attaching or fitting 456
together parts to form a product, but do not include packaging a 457
product. 458

(S) "Manufacturing operation" means a process in which 459
materials are changed, converted, or transformed into a 460
different state or form from which they previously existed and 461
includes refining materials, assembling parts, and preparing raw 462
materials and parts by mixing, measuring, blending, or otherwise 463
committing such materials or parts to the manufacturing process. 464
"Manufacturing operation" does not include packaging. 465

(T) "Fiscal officer" means, with respect to a regional 466
transit authority, the secretary-treasurer thereof, and with 467
respect to a county that is a transit authority, the fiscal 468
officer of the county transit board if one is appointed pursuant 469
to section 306.03 of the Revised Code or the county auditor if 470
the board of county commissioners operates the county transit 471
system. 472

(U) "Transit authority" means a regional transit authority 473
created pursuant to section 306.31 of the Revised Code or a 474
county in which a county transit system is created pursuant to 475
section 306.01 of the Revised Code. For the purposes of this 476
chapter, a transit authority must extend to at least the entire 477
area of a single county. A transit authority that includes 478
territory in more than one county must include all the area of 479
the most populous county that is a part of such transit 480
authority. County population shall be measured by the most 481
recent census taken by the United States census bureau. 482

(V) "Legislative authority" means, with respect to a 483

regional transit authority, the board of trustees thereof, and 484
with respect to a county that is a transit authority, the board 485
of county commissioners. 486

(W) "Territory of the transit authority" means all of the 487
area included within the territorial boundaries of a transit 488
authority as they from time to time exist. Such territorial 489
boundaries must at all times include all the area of a single 490
county or all the area of the most populous county that is a 491
part of such transit authority. County population shall be 492
measured by the most recent census taken by the United States 493
census bureau. 494

(X) "Providing a service" means providing or furnishing 495
anything described in division (B) (3) of this section for 496
consideration. 497

(Y) (1) (a) "Automatic data processing" means processing of 498
others' data, including keypunching or similar data entry 499
services together with verification thereof, or providing access 500
to computer equipment for the purpose of processing data. 501

(b) "Computer services" means providing services 502
consisting of specifying computer hardware configurations and 503
evaluating technical processing characteristics, computer 504
programming, and training of computer programmers and operators, 505
provided in conjunction with and to support the sale, lease, or 506
operation of taxable computer equipment or systems. 507

(c) "Electronic information services" means providing 508
access to computer equipment by means of telecommunications 509
equipment for the purpose of either of the following: 510

(i) Examining or acquiring data stored in or accessible to 511
the computer equipment; 512

(ii) Placing data into the computer equipment to be 513
retrieved by designated recipients with access to the computer 514
equipment. 515

"Electronic information services" does not include 516
electronic publishing. 517

(d) "Automatic data processing, computer services, or 518
electronic information services" shall not include personal or 519
professional services. 520

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 521
section, "personal and professional services" means all services 522
other than automatic data processing, computer services, or 523
electronic information services, including but not limited to: 524

(a) Accounting and legal services such as advice on tax 525
matters, asset management, budgetary matters, quality control, 526
information security, and auditing and any other situation where 527
the service provider receives data or information and studies, 528
alters, analyzes, interprets, or adjusts such material; 529

(b) Analyzing business policies and procedures; 530

(c) Identifying management information needs; 531

(d) Feasibility studies, including economic and technical 532
analysis of existing or potential computer hardware or software 533
needs and alternatives; 534

(e) Designing policies, procedures, and custom software 535
for collecting business information, and determining how data 536
should be summarized, sequenced, formatted, processed, 537
controlled, and reported so that it will be meaningful to 538
management; 539

(f) Developing policies and procedures that document how 540

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| business events and transactions are to be authorized, executed, and controlled; | 541 542 |
| (g) Testing of business procedures; | 543 |
| (h) Training personnel in business procedure applications; | 544 |
| (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; | 545 546 547 548 549 550 551 |
| (j) Providing debt collection services by any oral, written, graphic, or electronic means; | 552 553 |
| (k) Providing digital advertising services; | 554 |
| (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. | 555 556 557 558 559 560 561 562 |
| The services listed in divisions (Y) (2) (a) to (l) of this section are not automatic data processing or computer services. | 563 564 |
| (Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following: | 565 566 567 |
| (1) The holder of a permit or certificate issued by this | 568 |

state or the United States authorizing the holder to engage in 569
transportation of personal property belonging to others for 570
consideration over or on highways, roadways, streets, or any 571
similar public thoroughfare; 572

(2) A person who engages in the transportation of personal 573
property belonging to others for consideration over or on 574
highways, roadways, streets, or any similar public thoroughfare 575
but who could not have engaged in such transportation on 576
December 11, 1985, unless the person was the holder of a permit 577
or certificate of the types described in division (Z) (1) of this 578
section; 579

(3) A person who leases a motor vehicle to and operates it 580
for a person described by division (Z) (1) or (2) of this 581
section. 582

(AA) (1) "Telecommunications service" means the electronic 583
transmission, conveyance, or routing of voice, data, audio, 584
video, or any other information or signals to a point, or 585
between or among points. "Telecommunications service" includes 586
such transmission, conveyance, or routing in which computer 587
processing applications are used to act on the form, code, or 588
protocol of the content for purposes of transmission, 589
conveyance, or routing without regard to whether the service is 590
referred to as voice-over internet protocol service or is 591
classified by the federal communications commission as enhanced 592
or value-added. "Telecommunications service" does not include 593
any of the following: 594

(a) Data processing and information services that allow 595
data to be generated, acquired, stored, processed, or retrieved 596
and delivered by an electronic transmission to a consumer where 597
the consumer's primary purpose for the underlying transaction is 598

| | |
|---|--|
| the processed data or information; | 599 |
| (b) Installation or maintenance of wiring or equipment on a customer's premises; | 600 601 |
| (c) Tangible personal property; | 602 |
| (d) Advertising, including directory advertising; | 603 |
| (e) Billing and collection services provided to third parties; | 604 605 |
| (f) Internet access service; | 606 |
| (g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service, as defined in 47 U.S.C. 522(6), and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3; | 607 608 609 610 611 612 613 614 |
| (h) Ancillary service; | 615 |
| (i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones. | 616 617 |
| (2) "Ancillary service" means a service that is associated with or incidental to the provision of telecommunications service, including conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service. As used in this division: | 618 619 620 621 622 623 |
| (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video | 624 625 |

conference call, including providing a telephone number. 626

"Conference bridging service" does not include 627

telecommunications services used to reach the conference bridge. 628

(b) "Detailed telecommunications billing service" means an 629

ancillary service of separately stating information pertaining 630

to individual calls on a customer's billing statement. 631

(c) "Directory assistance" means an ancillary service of 632

providing telephone number or address information. 633

(d) "Vertical service" means an ancillary service that is 634

offered in connection with one or more telecommunications 635

services, which offers advanced calling features that allow 636

customers to identify callers and manage multiple calls and call 637

connections, including conference bridging service. 638

(e) "Voice mail service" means an ancillary service that 639

enables the customer to store, send, or receive recorded 640

messages. "Voice mail service" does not include any vertical 641

services that the customer may be required to have in order to 642

utilize the voice mail service. 643

(3) "900 service" means an inbound toll telecommunications 644

service purchased by a subscriber that allows the subscriber's 645

customers to call in to the subscriber's prerecorded 646

announcement or live service, and which is typically marketed 647

under the name "900 service" and any subsequent numbers 648

designated by the federal communications commission. "900 649

service" does not include the charge for collection services 650

provided by the seller of the telecommunications service to the 651

subscriber, or services or products sold by the subscriber to 652

the subscriber's customer. 653

(4) "Prepaid calling service" means the right to access 654

exclusively telecommunications services, which must be paid for 655
in advance and which enables the origination of calls using an 656
access number or authorization code, whether manually or 657
electronically dialed, and that is sold in predetermined units 658
or dollars of which the number declines with use in a known 659
amount. 660

(5) "Prepaid wireless calling service" means a 661
telecommunications service that provides the right to utilize 662
mobile telecommunications service as well as other non- 663
telecommunications services, including the download of digital 664
products delivered electronically, and content and ancillary 665
services, that must be paid for in advance and that is sold in 666
predetermined units or dollars of which the number declines with 667
use in a known amount. 668

(6) "Value-added non-voice data service" means a 669
telecommunications service in which computer processing 670
applications are used to act on the form, content, code, or 671
protocol of the information or data primarily for a purpose 672
other than transmission, conveyance, or routing. 673

(7) "Coin-operated telephone service" means a 674
telecommunications service paid for by inserting money into a 675
telephone accepting direct deposits of money to operate. 676

(8) "Customer" has the same meaning as in section 5739.034 677
of the Revised Code. 678

(BB) "Laundry and dry cleaning services" means removing 679
soil or dirt from towels, linens, articles of clothing, or other 680
fabric items that belong to others and supplying towels, linens, 681
articles of clothing, or other fabric items. "Laundry and dry 682
cleaning services" does not include the provision of self- 683

service facilities for use by consumers to remove soil or dirt 684
from towels, linens, articles of clothing, or other fabric 685
items. 686

(CC) "Magazines distributed as controlled circulation 687
publications" means magazines containing at least twenty-four 688
pages, at least twenty-five per cent editorial content, issued 689
at regular intervals four or more times a year, and circulated 690
without charge to the recipient, provided that such magazines 691
are not owned or controlled by individuals or business concerns 692
which conduct such publications as an auxiliary to, and 693
essentially for the advancement of the main business or calling 694
of, those who own or control them. 695

(DD) "Landscaping and lawn care service" means the 696
services of planting, seeding, sodding, removing, cutting, 697
trimming, pruning, mulching, aerating, applying chemicals, 698
watering, fertilizing, and providing similar services to 699
establish, promote, or control the growth of trees, shrubs, 700
flowers, grass, ground cover, and other flora, or otherwise 701
maintaining a lawn or landscape grown or maintained by the owner 702
for ornamentation or other nonagricultural purpose. However, 703
"landscaping and lawn care service" does not include the 704
providing of such services by a person who has less than five 705
thousand dollars in sales of such services during the calendar 706
year. 707

(EE) "Private investigation and security service" means 708
the performance of any activity for which the provider of such 709
service is required to be licensed pursuant to Chapter 4749. of 710
the Revised Code, or would be required to be so licensed in 711
performing such services in this state, and also includes the 712
services of conducting polygraph examinations and of monitoring 713

or overseeing the activities on or in, or the condition of, the 714
consumer's home, business, or other facility by means of 715
electronic or similar monitoring devices. "Private investigation 716
and security service" does not include special duty services 717
provided by off-duty police officers, deputy sheriffs, and other 718
peace officers regularly employed by the state or a political 719
subdivision. 720

(FF) "Information services" means providing conversation, 721
giving consultation or advice, playing or making a voice or 722
other recording, making or keeping a record of the number of 723
callers, and any other service provided to a consumer by means 724
of a nine hundred telephone call, except when the nine hundred 725
telephone call is the means by which the consumer makes a 726
contribution to a recognized charity. 727

(GG) "Research and development" means designing, creating, 728
or formulating new or enhanced products, equipment, or 729
manufacturing processes, and also means conducting scientific or 730
technological inquiry and experimentation in the physical 731
sciences with the goal of increasing scientific knowledge which 732
may reveal the bases for new or enhanced products, equipment, or 733
manufacturing processes. 734

(HH) "Qualified research and development equipment" means 735
either of the following: 736

(1) Capitalized tangible personal property, and leased 737
personal property that would be capitalized if purchased, used 738
by a person primarily to perform research and development; 739

(2) Any tangible personal property used by a megaproject 740
operator primarily to perform research and development at the 741
site of a megaproject that satisfies the criteria described in 742

division (A) (11) (a) (ii) of section 122.17 of the Revised Code 743
during the period that the megaproject operator has an agreement 744
for such megaproject with the tax credit authority under 745
division (D) of that section that remains in effect and has not 746
expired or been terminated. 747

"Qualified research and development equipment" does not 748
include tangible personal property primarily used in testing, as 749
defined in division (A) (4) of section 5739.011 of the Revised 750
Code, or used for recording or storing test results, unless such 751
property is primarily used by the consumer in testing the 752
product, equipment, or manufacturing process being created, 753
designed, or formulated by the consumer in the research and 754
development activity or in recording or storing such test 755
results. 756

(II) "Building maintenance and janitorial service" means 757
cleaning the interior or exterior of a building and any tangible 758
personal property located therein or thereon, including any 759
services incidental to such cleaning for which no separate 760
charge is made. However, "building maintenance and janitorial 761
service" does not include the providing of such service by a 762
person who has less than five thousand dollars in sales of such 763
service during the calendar year. As used in this division, 764
"cleaning" does not include sanitation services necessary for an 765
establishment described in 21 U.S.C. 608 to comply with rules 766
and regulations adopted pursuant to that section. 767

(JJ) "Exterminating service" means eradicating or 768
attempting to eradicate vermin infestations from a building or 769
structure, or the area surrounding a building or structure, and 770
includes activities to inspect, detect, or prevent vermin 771
infestation of a building or structure. 772

(KK) "Physical fitness facility service" means all 773
transactions by which a membership is granted, maintained, or 774
renewed, including initiation fees, membership dues, renewal 775
fees, monthly minimum fees, and other similar fees and dues, by 776
a physical fitness facility such as an athletic club, health 777
spa, or gymnasium, which entitles the member to use the facility 778
for physical exercise. 779

(LL) "Recreation and sports club service" means all 780
transactions by which a membership is granted, maintained, or 781
renewed, including initiation fees, membership dues, renewal 782
fees, monthly minimum fees, and other similar fees and dues, by 783
a recreation and sports club, which entitles the member to use 784
the facilities of the organization. "Recreation and sports club" 785
means an organization that has ownership of, or controls or 786
leases on a continuing, long-term basis, the facilities used by 787
its members and includes an aviation club, gun or shooting club, 788
yacht club, card club, swimming club, tennis club, golf club, 789
country club, riding club, amateur sports club, or similar 790
organization. 791

(MM) "Livestock" means farm animals commonly raised for 792
food, food production, or other agricultural purposes, 793
including, but not limited to, cattle, sheep, goats, swine, 794
poultry, and captive deer. "Livestock" does not include 795
invertebrates, amphibians, reptiles, domestic pets, animals for 796
use in laboratories or for exhibition, or other animals not 797
commonly raised for food or food production. 798

(NN) "Livestock structure" means a building or structure 799
used exclusively for the housing, raising, feeding, or 800
sheltering of livestock, and includes feed storage or handling 801
structures and structures for livestock waste handling. 802

(OO) "Horticulture" means the growing, cultivation, and 803
production of flowers, fruits, herbs, vegetables, sod, 804
mushrooms, and nursery stock. As used in this division, "nursery 805
stock" has the same meaning as in section 927.51 of the Revised 806
Code. 807

(PP) "Horticulture structure" means a building or 808
structure used exclusively for the commercial growing, raising, 809
or overwintering of horticultural products, and includes the 810
area used for stocking, storing, and packing horticultural 811
products when done in conjunction with the production of those 812
products. 813

(QQ) "Newspaper" means an unbound publication bearing a 814
title or name that is regularly published, at least as 815
frequently as biweekly, and distributed from a fixed place of 816
business to the public in a specific geographic area, and that 817
contains a substantial amount of news matter of international, 818
national, or local events of interest to the general public. 819

(RR) (1) "Feminine hygiene products" means tampons, panty 820
liners, menstrual cups, sanitary napkins, and other similar 821
tangible personal property designed for feminine hygiene in 822
connection with the human menstrual cycle, but does not include 823
grooming and hygiene products. 824

(2) "Grooming and hygiene products" means soaps and 825
cleaning solutions, shampoo, toothpaste, mouthwash, 826
antiperspirants, and sun tan lotions and screens, regardless of 827
whether any of these products are over-the-counter drugs. 828

(3) "Over-the-counter drugs" means a drug that contains a 829
label that identifies the product as a drug as required by 21 830
C.F.R. 201.66, which label includes a drug facts panel or a 831

statement of the active ingredients with a list of those 832
ingredients contained in the compound, substance, or 833
preparation. 834

(SS) (1) "Lease" or "rental" means any transfer of the 835
possession or control of tangible personal property for a fixed 836
or indefinite term, for consideration. "Lease" or "rental" 837
includes future options to purchase or extend, and agreements 838
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 839
trailers where the amount of consideration may be increased or 840
decreased by reference to the amount realized upon the sale or 841
disposition of the property. "Lease" or "rental" does not 842
include: 843

(a) A transfer of possession or control of tangible 844
personal property under a security agreement or a deferred 845
payment plan that requires the transfer of title upon completion 846
of the required payments; 847

(b) A transfer of possession or control of tangible 848
personal property under an agreement that requires the transfer 849
of title upon completion of required payments and payment of an 850
option price that does not exceed the greater of one hundred 851
dollars or one per cent of the total required payments; 852

(c) Providing tangible personal property along with an 853
operator for a fixed or indefinite period of time, if the 854
operator is necessary for the property to perform as designed. 855
For purposes of this division, the operator must do more than 856
maintain, inspect, or set up the tangible personal property. 857

(2) "Lease" and "rental," as defined in division (SS) of 858
this section, shall not apply to leases or rentals that exist 859
before June 26, 2003. 860

(3) "Lease" and "rental" have the same meaning as in 861
division (SS) (1) of this section regardless of whether a 862
transaction is characterized as a lease or rental under 863
generally accepted accounting principles, the Internal Revenue 864
Code, Title XIII of the Revised Code, or other federal, state, 865
or local laws. 866

(TT) "Mobile telecommunications service" has the same 867
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 868
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 869
amended, and, on and after August 1, 2003, includes related fees 870
and ancillary services, including universal service fees, 871
detailed billing service, directory assistance, service 872
initiation, voice mail service, and vertical services, such as 873
caller ID and three-way calling. 874

(UU) "Certified service provider" has the same meaning as 875
in section 5740.01 of the Revised Code. 876

(VV) "Satellite broadcasting service" means the 877
distribution or broadcasting of programming or services by 878
satellite directly to the subscriber's receiving equipment 879
without the use of ground receiving or distribution equipment, 880
except the subscriber's receiving equipment or equipment used in 881
the uplink process to the satellite, and includes all service 882
and rental charges, premium channels or other special services, 883
installation and repair service charges, and any other charges 884
having any connection with the provision of the satellite 885
broadcasting service. 886

(WW) "Tangible personal property" means personal property 887
that can be seen, weighed, measured, felt, or touched, or that 888
is in any other manner perceptible to the senses. For purposes 889
of this chapter and Chapter 5741. of the Revised Code, "tangible 890

personal property" includes motor vehicles, electricity, water, 891
gas, steam, and prewritten computer software. 892

(XX) "Municipal gas utility" means a municipal corporation 893
that owns or operates a system for the distribution of natural 894
gas. 895

(YY) "Computer" means an electronic device that accepts 896
information in digital or similar form and manipulates it for a 897
result based on a sequence of instructions. 898

(ZZ) "Computer software" means a set of coded instructions 899
designed to cause a computer or automatic data processing 900
equipment to perform a task. 901

(AAA) "Delivered electronically" means delivery of 902
computer software from the seller to the purchaser by means 903
other than tangible storage media. 904

(BBB) "Prewritten computer software" means computer 905
software, including prewritten upgrades, that is not designed 906
and developed by the author or other creator to the 907
specifications of a specific purchaser. The combining of two or 908
more prewritten computer software programs or prewritten 909
portions thereof does not cause the combination to be other than 910
prewritten computer software. "Prewritten computer software" 911
includes software designed and developed by the author or other 912
creator to the specifications of a specific purchaser when it is 913
sold to a person other than the purchaser. If a person modifies 914
or enhances computer software of which the person is not the 915
author or creator, the person shall be deemed to be the author 916
or creator only of such person's modifications or enhancements. 917
Prewritten computer software or a prewritten portion thereof 918
that is modified or enhanced to any degree, where such 919

modification or enhancement is designed and developed to the 920
specifications of a specific purchaser, remains prewritten 921
computer software; provided, however, that where there is a 922
reasonable, separately stated charge or an invoice or other 923
statement of the price given to the purchaser for the 924
modification or enhancement, the modification or enhancement 925
shall not constitute prewritten computer software. 926

(CCC) (1) "Food" means substances, whether in liquid, 927
concentrated, solid, frozen, dried, or dehydrated form, that are 928
sold for ingestion or chewing by humans and are consumed for 929
their taste or nutritional value. "Food" does not include 930
alcoholic beverages, dietary supplements, soft drinks, or 931
tobacco. 932

(2) As used in division (CCC) (1) of this section: 933

(a) "Alcoholic beverages" means beverages that are 934
suitable for human consumption and contain one-half of one per 935
cent or more of alcohol by volume. 936

(b) "Dietary supplements" means any product, other than 937
tobacco, that is intended to supplement the diet and that is 938
intended for ingestion in tablet, capsule, powder, softgel, 939
gelcap, or liquid form, or, if not intended for ingestion in 940
such a form, is not represented as conventional food for use as 941
a sole item of a meal or of the diet; that is required to be 942
labeled as a dietary supplement, identifiable by the "supplement 943
facts" box found on the label, as required by 21 C.F.R. 101.36; 944
and that contains one or more of the following dietary 945
ingredients: 946

(i) A vitamin; 947

(ii) A mineral; 948

| | |
|---|---|
| (iii) An herb or other botanical; | 949 |
| (iv) An amino acid; | 950 |
| (v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; | 951 952 |
| (vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (CCC) (2) (b) (i) to (v) of this section. | 953 954 955 |
| (c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume. | 956 957 958 959 960 |
| (d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco. | 961 962 |
| (DDD) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body. | 963 964 965 966 967 968 969 970 971 |
| (EEE) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription. | 972 973 974 975 |
| (FFF) "Durable medical equipment" means equipment, | 976 |

including repair and replacement parts for such equipment, that 977
can withstand repeated use, is primarily and customarily used to 978
serve a medical purpose, generally is not useful to a person in 979
the absence of illness or injury, and is not worn in or on the 980
body. "Durable medical equipment" does not include mobility 981
enhancing equipment. 982

(GGG) "Mobility enhancing equipment" means equipment, 983
including repair and replacement parts for such equipment, that 984
is primarily and customarily used to provide or increase the 985
ability to move from one place to another and is appropriate for 986
use either in a home or a motor vehicle, that is not generally 987
used by persons with normal mobility, and that does not include 988
any motor vehicle or equipment on a motor vehicle normally 989
provided by a motor vehicle manufacturer. "Mobility enhancing 990
equipment" does not include durable medical equipment. 991

(HHH) "Prosthetic device" means a replacement, corrective, 992
or supportive device, including repair and replacement parts for 993
the device, worn on or in the human body to artificially replace 994
a missing portion of the body, prevent or correct physical 995
deformity or malfunction, or support a weak or deformed portion 996
of the body. As used in this division, before July 1, 2019, 997
"prosthetic device" does not include corrective eyeglasses, 998
contact lenses, or dental prosthesis. On or after July 1, 2019, 999
"prosthetic device" does not include dental prosthesis but does 1000
include corrective eyeglasses or contact lenses. 1001

(III) (1) "Fractional aircraft ownership program" means a 1002
program in which persons within an affiliated group sell and 1003
manage fractional ownership program aircraft, provided that at 1004
least one hundred airworthy aircraft are operated in the program 1005
and the program meets all of the following criteria: 1006

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

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

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

(d) A dry-lease aircraft interchange arrangement is in effect among all of the fractional owners.

(e) Multi-year program agreements are in effect regarding the fractional ownership, management services, and dry-lease aircraft interchange arrangement aspects of the program.

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

(a) "Affiliated group" has the same meaning as in division (B)(3)(e) of this section.

(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.

(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.

(d) "Management services" means administrative and

aviation support services furnished under a fractional aircraft 1035
ownership program in accordance with a management services 1036
agreement under division (III) (1) (e) of this section, and 1037
offered by the program manager to the fractional owners, 1038
including, at a minimum, the establishment and implementation of 1039
safety guidelines; the coordination of the scheduling of the 1040
program aircraft and crews; program aircraft maintenance; 1041
program aircraft insurance; crew training for crews employed, 1042
furnished, or contracted by the program manager or the 1043
fractional owner; the satisfaction of record-keeping 1044
requirements; and the development and use of an operations 1045
manual and a maintenance manual for the fractional aircraft 1046
ownership program. 1047

(e) "Program manager" means the person that offers 1048
management services to fractional owners pursuant to a 1049
management services agreement under division (III) (1) (e) of this 1050
section. 1051

(JJJ) "Electronic publishing" means providing access to 1052
one or more of the following primarily for business customers, 1053
including the federal government or a state government or a 1054
political subdivision thereof, to conduct research: news; 1055
business, financial, legal, consumer, or credit materials; 1056
editorials, columns, reader commentary, or features; photos or 1057
images; archival or research material; legal notices, identity 1058
verification, or public records; scientific, educational, 1059
instructional, technical, professional, trade, or other literary 1060
materials; or other similar information which has been gathered 1061
and made available by the provider to the consumer in an 1062
electronic format. Providing electronic publishing includes the 1063
functions necessary for the acquisition, formatting, editing, 1064
storage, and dissemination of data or information that is the 1065

subject of a sale. 1066

(KKK) "Medicaid health insuring corporation" means a 1067
health insuring corporation that holds a certificate of 1068
authority under Chapter 1751. of the Revised Code and is under 1069
contract with the department of medicaid pursuant to section 1070
5167.10 of the Revised Code. 1071

(LLL) "Managed care premium" means any premium, 1072
capitation, or other payment a medicaid health insuring 1073
corporation receives for providing or arranging for the 1074
provision of health care services to its members or enrollees 1075
residing in this state. 1076

(MMM) "Captive deer" means deer and other cervidae that 1077
have been legally acquired, or their offspring, that are 1078
privately owned for agricultural or farming purposes. 1079

(NNN) "Gift card" means a document, card, certificate, or 1080
other record, whether tangible or intangible, that may be 1081
redeemed by a consumer for a dollar value when making a purchase 1082
of tangible personal property or services. 1083

(OOO) "Specified digital product" means an electronically 1084
transferred digital audiovisual work, digital audio work, or 1085
digital book. 1086

As used in division (OOO) of this section: 1087

(1) "Digital audiovisual work" means a series of related 1088
images that, when shown in succession, impart an impression of 1089
motion, together with accompanying sounds, if any. 1090

(2) "Digital audio work" means a work that results from 1091
the fixation of a series of musical, spoken, or other sounds, 1092
including digitized sound files that are downloaded onto a 1093

device and that may be used to alert the customer with respect 1094
to a communication. 1095

(3) "Digital book" means a work that is generally 1096
recognized in the ordinary and usual sense as a book. 1097

(4) "Electronically transferred" means obtained by the 1098
purchaser by means other than tangible storage media. 1099

(PPP) "Digital advertising services" means providing 1100
access, by means of telecommunications equipment, to computer 1101
equipment that is used to enter, upload, download, review, 1102
manipulate, store, add, or delete data for the purpose of 1103
electronically displaying, delivering, placing, or transferring 1104
promotional advertisements to potential customers about products 1105
or services or about industry or business brands. 1106

(QQQ) "Peer-to-peer car sharing program" has the same 1107
meaning as in section 4516.01 of the Revised Code. 1108

(RRR) "Megaproject" and "megaproject operator" have the 1109
same meanings as in section 122.17 of the Revised Code. 1110

(SSS) (1) "Diaper" means an absorbent garment worn by 1111
humans who are incapable of, or have difficulty, controlling 1112
their bladder or bowel movements. 1113

(2) "Children's diaper" means a diaper marketed to be worn 1114
by children. 1115

(3) "Adult diaper" means a diaper other than a children's 1116
diaper. 1117

Sec. 5739.02. For the purpose of providing revenue with 1118
which to meet the needs of the state, for the use of the general 1119
revenue fund of the state, for the purpose of securing a 1120
thorough and efficient system of common schools throughout the 1121

state, for the purpose of affording revenues, in addition to 1122
those from general property taxes, permitted under 1123
constitutional limitations, and from other sources, for the 1124
support of local governmental functions, and for the purpose of 1125
reimbursing the state for the expense of administering this 1126
chapter, an excise tax is hereby levied on each retail sale made 1127
in this state. 1128

(A) (1) The tax shall be collected as provided in section 1129
5739.025 of the Revised Code. The rate of the tax shall be five 1130
and three-fourths per cent. The tax applies and is collectible 1131
when the sale is made, regardless of the time when the price is 1132
paid or delivered. 1133

(2) In the case of the lease or rental, with a fixed term 1134
of more than thirty days or an indefinite term with a minimum 1135
period of more than thirty days, of any motor vehicles designed 1136
by the manufacturer to carry a load of not more than one ton, 1137
watercraft, outboard motor, or aircraft, or of any tangible 1138
personal property, other than motor vehicles designed by the 1139
manufacturer to carry a load of more than one ton, to be used by 1140
the lessee or renter primarily for business purposes, the tax 1141
shall be collected by the vendor at the time the lease or rental 1142
is consummated and shall be calculated by the vendor on the 1143
basis of the total amount to be paid by the lessee or renter 1144
under the lease agreement. If the total amount of the 1145
consideration for the lease or rental includes amounts that are 1146
not calculated at the time the lease or rental is executed, the 1147
tax shall be calculated and collected by the vendor at the time 1148
such amounts are billed to the lessee or renter. In the case of 1149
an open-end lease or rental, the tax shall be calculated by the 1150
vendor on the basis of the total amount to be paid during the 1151
initial fixed term of the lease or rental, and for each 1152

subsequent renewal period as it comes due. As used in this 1153
division, "motor vehicle" has the same meaning as in section 1154
4501.01 of the Revised Code, and "watercraft" includes an 1155
outdrive unit attached to the watercraft. 1156

A lease with a renewal clause and a termination penalty or 1157
similar provision that applies if the renewal clause is not 1158
exercised is presumed to be a sham transaction. In such a case, 1159
the tax shall be calculated and paid on the basis of the entire 1160
length of the lease period, including any renewal periods, until 1161
the termination penalty or similar provision no longer applies. 1162
The taxpayer shall bear the burden, by a preponderance of the 1163
evidence, that the transaction or series of transactions is not 1164
a sham transaction. 1165

(3) Except as provided in division (A) (2) of this section, 1166
in the case of a sale, the price of which consists in whole or 1167
in part of the lease or rental of tangible personal property, 1168
the tax shall be measured by the installments of that lease or 1169
rental. 1170

(4) In the case of a sale of a physical fitness facility 1171
service or recreation and sports club service, the price of 1172
which consists in whole or in part of a membership for the 1173
receipt of the benefit of the service, the tax applicable to the 1174
sale shall be measured by the installments thereof. 1175

(B) The tax does not apply to the following: 1176

(1) Sales to the state or any of its political 1177
subdivisions, or to any other state or its political 1178
subdivisions if the laws of that state exempt from taxation 1179
sales made to this state and its political subdivisions; 1180

(2) Sales of food for human consumption off the premises 1181

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| where sold; | 1182 |
| (3) Sales of food sold to students only in a cafeteria, | 1183 |
| dormitory, fraternity, or sorority maintained in a private, | 1184 |
| public, or parochial school, college, or university; | 1185 |
| (4) Sales of newspapers and sales or transfers of | 1186 |
| magazines distributed as controlled circulation publications; | 1187 |
| (5) The furnishing, preparing, or serving of meals without | 1188 |
| charge by an employer to an employee provided the employer | 1189 |
| records the meals as part compensation for services performed or | 1190 |
| work done; | 1191 |
| (6) (a) Sales of motor fuel upon receipt, use, | 1192 |
| distribution, or sale of which in this state a tax is imposed by | 1193 |
| the law of this state, but this exemption shall not apply to the | 1194 |
| sale of motor fuel on which a refund of the tax is allowable | 1195 |
| under division (A) of section 5735.14 of the Revised Code; and | 1196 |
| the tax commissioner may deduct the amount of tax levied by this | 1197 |
| section applicable to the price of motor fuel when granting a | 1198 |
| refund of motor fuel tax pursuant to division (A) of section | 1199 |
| 5735.14 of the Revised Code and shall cause the amount deducted | 1200 |
| to be paid into the general revenue fund of this state; | 1201 |
| (b) Sales of motor fuel other than that described in | 1202 |
| division (B) (6) (a) of this section and used for powering a | 1203 |
| refrigeration unit on a vehicle other than one used primarily to | 1204 |
| provide comfort to the operator or occupants of the vehicle. | 1205 |
| (7) Sales of natural gas by a natural gas company or | 1206 |
| municipal gas utility, of water by a water-works company, or of | 1207 |
| steam by a heating company, if in each case the thing sold is | 1208 |
| delivered to consumers through pipes or conduits, and all sales | 1209 |
| of communications services by a telegraph company, all terms as | 1210 |

defined in section 5727.01 of the Revised Code, and sales of 1211
electricity delivered through wires; 1212

(8) Casual sales by a person, or auctioneer employed 1213
directly by the person to conduct such sales, except as to such 1214
sales of motor vehicles, watercraft or outboard motors required 1215
to be titled under section 1548.06 of the Revised Code, 1216
watercraft documented with the United States coast guard, 1217
snowmobiles, and all-purpose vehicles as defined in section 1218
4519.01 of the Revised Code; 1219

(9) (a) Sales of services or tangible personal property, 1220
other than motor vehicles, mobile homes, and manufactured homes, 1221
by churches, organizations exempt from taxation under section 1222
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1223
organizations operated exclusively for charitable purposes as 1224
defined in division (B) (12) of this section, provided that the 1225
number of days on which such tangible personal property or 1226
services, other than items never subject to the tax, are sold 1227
does not exceed six in any calendar year, except as otherwise 1228
provided in division (B) (9) (b) of this section. If the number of 1229
days on which such sales are made exceeds six in any calendar 1230
year, the church or organization shall be considered to be 1231
engaged in business and all subsequent sales by it shall be 1232
subject to the tax. In counting the number of days, all sales by 1233
groups within a church or within an organization shall be 1234
considered to be sales of that church or organization. 1235

(b) The limitation on the number of days on which tax- 1236
exempt sales may be made by a church or organization under 1237
division (B) (9) (a) of this section does not apply to sales made 1238
by student clubs and other groups of students of a primary or 1239
secondary school, or a parent-teacher association, booster 1240

group, or similar organization that raises money to support or 1241
fund curricular or extracurricular activities of a primary or 1242
secondary school. 1243

(c) Divisions (B) (9) (a) and (b) of this section do not 1244
apply to sales by a noncommercial educational radio or 1245
television broadcasting station. 1246

(10) Sales not within the taxing power of this state under 1247
the Constitution or laws of the United States or the 1248
Constitution of this state; 1249

(11) Except for transactions that are sales under division 1250
(B) (3) (p) of section 5739.01 of the Revised Code, the 1251
transportation of persons or property, unless the transportation 1252
is by a private investigation and security service; 1253

(12) Sales of tangible personal property or services to 1254
churches, to organizations exempt from taxation under section 1255
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1256
nonprofit organizations operated exclusively for charitable 1257
purposes in this state, no part of the net income of which 1258
inures to the benefit of any private shareholder or individual, 1259
and no substantial part of the activities of which consists of 1260
carrying on propaganda or otherwise attempting to influence 1261
legislation; sales to offices administering one or more homes 1262
for the aged or one or more hospital facilities exempt under 1263
section 140.08 of the Revised Code; and sales to organizations 1264
described in division (D) of section 5709.12 of the Revised 1265
Code. 1266

"Charitable purposes" means the relief of poverty; the 1267
improvement of health through the alleviation of illness, 1268
disease, or injury; the operation of an organization exclusively 1269

for the provision of professional, laundry, printing, and 1270
purchasing services to hospitals or charitable institutions; the 1271
operation of a home for the aged, as defined in section 5701.13 1272
of the Revised Code; the operation of a radio or television 1273
broadcasting station that is licensed by the federal 1274
communications commission as a noncommercial educational radio 1275
or television station; the operation of a nonprofit animal 1276
adoption service or a county humane society; the promotion of 1277
education by an institution of learning that maintains a faculty 1278
of qualified instructors, teaches regular continuous courses of 1279
study, and confers a recognized diploma upon completion of a 1280
specific curriculum; the operation of a parent-teacher 1281
association, booster group, or similar organization primarily 1282
engaged in the promotion and support of the curricular or 1283
extracurricular activities of a primary or secondary school; the 1284
operation of a community or area center in which presentations 1285
in music, dramatics, the arts, and related fields are made in 1286
order to foster public interest and education therein; the 1287
production of performances in music, dramatics, and the arts; or 1288
the promotion of education by an organization engaged in 1289
carrying on research in, or the dissemination of, scientific and 1290
technological knowledge and information primarily for the 1291
public. 1292

Nothing in this division shall be deemed to exempt sales 1293
to any organization for use in the operation or carrying on of a 1294
trade or business, or sales to a home for the aged for use in 1295
the operation of independent living facilities as defined in 1296
division (A) of section 5709.12 of the Revised Code. 1297

(13) Building and construction materials and services sold 1298
to construction contractors for incorporation into a structure 1299
or improvement to real property under a construction contract 1300

with this state or a political subdivision of this state, or 1301
with the United States government or any of its agencies; 1302
building and construction materials and services sold to 1303
construction contractors for incorporation into a structure or 1304
improvement to real property that are accepted for ownership by 1305
this state or any of its political subdivisions, or by the 1306
United States government or any of its agencies at the time of 1307
completion of the structures or improvements; building and 1308
construction materials sold to construction contractors for 1309
incorporation into a horticulture structure or livestock 1310
structure for a person engaged in the business of horticulture 1311
or producing livestock; building materials and services sold to 1312
a construction contractor for incorporation into a house of 1313
public worship or religious education, or a building used 1314
exclusively for charitable purposes under a construction 1315
contract with an organization whose purpose is as described in 1316
division (B) (12) of this section; building materials and 1317
services sold to a construction contractor for incorporation 1318
into a building under a construction contract with an 1319
organization exempt from taxation under section 501(c) (3) of the 1320
Internal Revenue Code of 1986 when the building is to be used 1321
exclusively for the organization's exempt purposes; building and 1322
construction materials sold for incorporation into the original 1323
construction of a sports facility under section 307.696 of the 1324
Revised Code; building and construction materials and services 1325
sold to a construction contractor for incorporation into real 1326
property outside this state if such materials and services, when 1327
sold to a construction contractor in the state in which the real 1328
property is located for incorporation into real property in that 1329
state, would be exempt from a tax on sales levied by that state; 1330
building and construction materials for incorporation into a 1331
transportation facility pursuant to a public-private agreement 1332

entered into under sections 5501.70 to 5501.83 of the Revised Code; until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center; and building and construction materials sold for incorporation into a structure or improvement to real property that is used primarily as, or primarily in support of, a manufacturing facility or research and development facility and that is to be owned by a megaproject operator upon completion and located at the site of a megaproject that satisfies the criteria described in division (A) (11) (a) (ii) of section 122.17 of the Revised Code, provided that the sale occurs during the period that the megaproject operator has an agreement for such megaproject with the tax credit authority under division (D) of section 122.17 of the Revised Code that remains in effect and has not expired or been terminated.

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

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

including any machinery, equipment, and supplies used to make 1364
labels or packages, to prepare packages or products for 1365
labeling, or to label packages or products, by or on the order 1366
of the person doing the packaging, or sold at retail. "Packages" 1367
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1368
bindings, wrappings, and other similar devices and containers, 1369
but does not include motor vehicles or bulk tanks, trailers, or 1370
similar devices attached to motor vehicles. "Packaging" means 1371
placing in a package. Division (B) (15) of this section does not 1372
apply to persons engaged in highway transportation for hire. 1373

(16) Sales of food to persons using supplemental nutrition 1374
assistance program benefits to purchase the food. As used in 1375
this division, "food" has the same meaning as in 7 U.S.C. 2012 1376
and federal regulations adopted pursuant to the Food and 1377
Nutrition Act of 2008. 1378

(17) Sales to persons engaged in farming, agriculture, 1379
horticulture, or floriculture, of tangible personal property for 1380
use or consumption primarily in the production by farming, 1381
agriculture, horticulture, or floriculture of other tangible 1382
personal property for use or consumption primarily in the 1383
production of tangible personal property for sale by farming, 1384
agriculture, horticulture, or floriculture; or material and 1385
parts for incorporation into any such tangible personal property 1386
for use or consumption in production; and of tangible personal 1387
property for such use or consumption in the conditioning or 1388
holding of products produced by and for such use, consumption, 1389
or sale by persons engaged in farming, agriculture, 1390
horticulture, or floriculture, except where such property is 1391
incorporated into real property; 1392

(18) Sales of drugs for a human being that may be 1393

dispensed only pursuant to a prescription; insulin as recognized 1394
in the official United States pharmacopoeia; urine and blood 1395
testing materials when used by diabetics or persons with 1396
hypoglycemia to test for glucose or acetone; hypodermic syringes 1397
and needles when used by diabetics for insulin injections; 1398
epoetin alfa when purchased for use in the treatment of persons 1399
with medical disease; hospital beds when purchased by hospitals, 1400
nursing homes, or other medical facilities; and medical oxygen 1401
and medical oxygen-dispensing equipment when purchased by 1402
hospitals, nursing homes, or other medical facilities; 1403

(19) Sales of prosthetic devices, durable medical 1404
equipment for home use, or mobility enhancing equipment, when 1405
made pursuant to a prescription and when such devices or 1406
equipment are for use by a human being. 1407

(20) Sales of emergency and fire protection vehicles and 1408
equipment to nonprofit organizations for use solely in providing 1409
fire protection and emergency services, including trauma care 1410
and emergency medical services, for political subdivisions of 1411
the state; 1412

(21) Sales of tangible personal property manufactured in 1413
this state, if sold by the manufacturer in this state to a 1414
retailer for use in the retail business of the retailer outside 1415
of this state and if possession is taken from the manufacturer 1416
by the purchaser within this state for the sole purpose of 1417
immediately removing the same from this state in a vehicle owned 1418
by the purchaser; 1419

(22) Sales of services provided by the state or any of its 1420
political subdivisions, agencies, instrumentalities, 1421
institutions, or authorities, or by governmental entities of the 1422
state or any of its political subdivisions, agencies, 1423

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| instrumentalities, institutions, or authorities; | 1424 |
| (23) Sales of motor vehicles to nonresidents of this state | 1425 |
| under the circumstances described in division (B) of section | 1426 |
| 5739.029 of the Revised Code; | 1427 |
| (24) Sales to persons engaged in the preparation of eggs | 1428 |
| for sale of tangible personal property used or consumed directly | 1429 |
| in such preparation, including such tangible personal property | 1430 |
| used for cleaning, sanitizing, preserving, grading, sorting, and | 1431 |
| classifying by size; packages, including material and parts for | 1432 |
| packages, and machinery, equipment, and material for use in | 1433 |
| packaging eggs for sale; and handling and transportation | 1434 |
| equipment and parts therefor, except motor vehicles licensed to | 1435 |
| operate on public highways, used in intraplant or interplant | 1436 |
| transfers or shipment of eggs in the process of preparation for | 1437 |
| sale, when the plant or plants within or between which such | 1438 |
| transfers or shipments occur are operated by the same person. | 1439 |
| "Packages" includes containers, cases, baskets, flats, fillers, | 1440 |
| filler flats, cartons, closure materials, labels, and labeling | 1441 |
| materials, and "packaging" means placing therein. | 1442 |
| (25) (a) Sales of water to a consumer for residential use; | 1443 |
| (b) Sales of water by a nonprofit corporation engaged | 1444 |
| exclusively in the treatment, distribution, and sale of water to | 1445 |
| consumers, if such water is delivered to consumers through pipes | 1446 |
| or tubing. | 1447 |
| (26) Fees charged for inspection or reinspection of motor | 1448 |
| vehicles under section 3704.14 of the Revised Code; | 1449 |
| (27) Sales to persons licensed to conduct a food service | 1450 |
| operation pursuant to section 3717.43 of the Revised Code, of | 1451 |
| tangible personal property primarily used directly for the | 1452 |

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| following: | 1453 |
| (a) To prepare food for human consumption for sale; | 1454 |
| (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer; | 1455 1456 1457 1458 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale. | 1459 1460 |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies; | 1461 1462 |
| (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code; | 1463 1464 1465 1466 |
| (30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code; | 1467 1468 1469 |
| (31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code; | 1470 1471 1472 |
| (32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property; | 1473 1474 1475 1476 1477 1478 |
| (33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and | 1479 1480 |

issued a charter by the congress of the United States or is 1481
recognized by the United States veterans administration, for use 1482
by the headquarters; 1483

(34) Sales to a telecommunications service vendor, mobile 1484
telecommunications service vendor, or satellite broadcasting 1485
service vendor of tangible personal property and services used 1486
directly and primarily in transmitting, receiving, switching, or 1487
recording any interactive, one- or two-way electromagnetic 1488
communications, including voice, image, data, and information, 1489
through the use of any medium, including, but not limited to, 1490
poles, wires, cables, switching equipment, computers, and record 1491
storage devices and media, and component parts for the tangible 1492
personal property. The exemption provided in this division shall 1493
be in lieu of all other exemptions under division (B) (42) (a) or 1494
(n) of this section to which the vendor may otherwise be 1495
entitled, based upon the use of the thing purchased in providing 1496
the telecommunications, mobile telecommunications, or satellite 1497
broadcasting service. 1498

(35) (a) Sales where the purpose of the consumer is to use 1499
or consume the things transferred in making retail sales and 1500
consisting of newspaper inserts, catalogues, coupons, flyers, 1501
gift certificates, or other advertising material that prices and 1502
describes tangible personal property offered for retail sale. 1503

(b) Sales to direct marketing vendors of preliminary 1504
materials such as photographs, artwork, and typesetting that 1505
will be used in printing advertising material; and of printed 1506
matter that offers free merchandise or chances to win sweepstake 1507
prizes and that is mailed to potential customers with 1508
advertising material described in division (B) (35) (a) of this 1509
section; 1510

(c) Sales of equipment such as telephones, computers, 1511
facsimile machines, and similar tangible personal property 1512
primarily used to accept orders for direct marketing retail 1513
sales. 1514

(d) Sales of automatic food vending machines that preserve 1515
food with a shelf life of forty-five days or less by 1516
refrigeration and dispense it to the consumer. 1517

For purposes of division (B) (35) of this section, "direct 1518
marketing" means the method of selling where consumers order 1519
tangible personal property by United States mail, delivery 1520
service, or telecommunication and the vendor delivers or ships 1521
the tangible personal property sold to the consumer from a 1522
warehouse, catalogue distribution center, or similar fulfillment 1523
facility by means of the United States mail, delivery service, 1524
or common carrier. 1525

(36) Sales to a person engaged in the business of 1526
horticulture or producing livestock of materials to be 1527
incorporated into a horticulture structure or livestock 1528
structure; 1529

(37) Sales of personal computers, computer monitors, 1530
computer keyboards, modems, and other peripheral computer 1531
equipment to an individual who is licensed or certified to teach 1532
in an elementary or a secondary school in this state for use by 1533
that individual in preparation for teaching elementary or 1534
secondary school students; 1535

(38) Sales of tangible personal property that is not 1536
required to be registered or licensed under the laws of this 1537
state to a citizen of a foreign nation that is not a citizen of 1538
the United States, provided the property is delivered to a 1539

person in this state that is not a related member of the 1540
purchaser, is physically present in this state for the sole 1541
purpose of temporary storage and package consolidation, and is 1542
subsequently delivered to the purchaser at a delivery address in 1543
a foreign nation. As used in division (B)(38) of this section, 1544
"related member" has the same meaning as in section 5733.042 of 1545
the Revised Code, and "temporary storage" means the storage of 1546
tangible personal property for a period of not more than sixty 1547
days. 1548

(39) Sales of used manufactured homes and used mobile 1549
homes, as defined in section 5739.0210 of the Revised Code, made 1550
on or after January 1, 2000; 1551

(40) Sales of tangible personal property and services to a 1552
provider of electricity used or consumed directly and primarily 1553
in generating, transmitting, or distributing electricity for use 1554
by others, including property that is or is to be incorporated 1555
into and will become a part of the consumer's production, 1556
transmission, or distribution system and that retains its 1557
classification as tangible personal property after 1558
incorporation; fuel or power used in the production, 1559
transmission, or distribution of electricity; energy conversion 1560
equipment as defined in section 5727.01 of the Revised Code; and 1561
tangible personal property and services used in the repair and 1562
maintenance of the production, transmission, or distribution 1563
system, including only those motor vehicles as are specially 1564
designed and equipped for such use. The exemption provided in 1565
this division shall be in lieu of all other exemptions in 1566
division (B)(42)(a) or (n) of this section to which a provider 1567
of electricity may otherwise be entitled based on the use of the 1568
tangible personal property or service purchased in generating, 1569
transmitting, or distributing electricity. 1570

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| (41) Sales to a person providing services under division | 1571 |
| (B) (3) (p) of section 5739.01 of the Revised Code of tangible | 1572 |
| personal property and services used directly and primarily in | 1573 |
| providing taxable services under that section. | 1574 |
| (42) Sales where the purpose of the purchaser is to do any | 1575 |
| of the following: | 1576 |
| (a) To incorporate the thing transferred as a material or | 1577 |
| a part into tangible personal property to be produced for sale | 1578 |
| by manufacturing, assembling, processing, or refining; or to use | 1579 |
| or consume the thing transferred directly in producing tangible | 1580 |
| personal property for sale by mining, including, without | 1581 |
| limitation, the extraction from the earth of all substances that | 1582 |
| are classed geologically as minerals, or directly in the | 1583 |
| rendition of a public utility service, except that the sales tax | 1584 |
| levied by this section shall be collected upon all meals, | 1585 |
| drinks, and food for human consumption sold when transporting | 1586 |
| persons. This paragraph does not exempt from "retail sale" or | 1587 |
| "sales at retail" the sale of tangible personal property that is | 1588 |
| to be incorporated into a structure or improvement to real | 1589 |
| property. | 1590 |
| (b) To hold the thing transferred as security for the | 1591 |
| performance of an obligation of the vendor; | 1592 |
| (c) To resell, hold, use, or consume the thing transferred | 1593 |
| as evidence of a contract of insurance; | 1594 |
| (d) To use or consume the thing directly in commercial | 1595 |
| fishing; | 1596 |
| (e) To incorporate the thing transferred as a material or | 1597 |
| a part into, or to use or consume the thing transferred directly | 1598 |
| in the production of, magazines distributed as controlled | 1599 |

circulation publications; 1600

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

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

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

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

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

division (B) (35) of this section. 1629

(k) To use or consume the thing transferred to fulfill a 1630
contractual obligation incurred by a warrantor pursuant to a 1631
warranty provided as a part of the price of the tangible 1632
personal property sold or by a vendor of a warranty, maintenance 1633
or service contract, or similar agreement the provision of which 1634
is defined as a sale under division (B) (7) of section 5739.01 of 1635
the Revised Code; 1636

(l) To use or consume the thing transferred in the 1637
production of a newspaper for distribution to the public; 1638

(m) To use tangible personal property to perform a service 1639
listed in division (B) (3) of section 5739.01 of the Revised 1640
Code, if the property is or is to be permanently transferred to 1641
the consumer of the service as an integral part of the 1642
performance of the service; 1643

(n) To use or consume the thing transferred primarily in 1644
producing tangible personal property for sale by farming, 1645
agriculture, horticulture, or floriculture. Persons engaged in 1646
rendering farming, agriculture, horticulture, or floriculture 1647
services for others are deemed engaged primarily in farming, 1648
agriculture, horticulture, or floriculture. This paragraph does 1649
not exempt from "retail sale" or "sales at retail" the sale of 1650
tangible personal property that is to be incorporated into a 1651
structure or improvement to real property. 1652

(o) To use or consume the thing transferred in acquiring, 1653
formatting, editing, storing, and disseminating data or 1654
information by electronic publishing; 1655

(p) To provide the thing transferred to the owner or 1656
lessee of a motor vehicle that is being repaired or serviced, if 1657

the thing transferred is a rented motor vehicle and the 1658
purchaser is reimbursed for the cost of the rented motor vehicle 1659
by a manufacturer, warrantor, or provider of a maintenance, 1660
service, or other similar contract or agreement, with respect to 1661
the motor vehicle that is being repaired or serviced; 1662

(q) To use or consume the thing transferred directly in 1663
production of crude oil and natural gas for sale. Persons 1664
engaged in rendering production services for others are deemed 1665
engaged in production. 1666

As used in division (B) (42) (q) of this section, 1667
"production" means operations and tangible personal property 1668
directly used to expose and evaluate an underground reservoir 1669
that may contain hydrocarbon resources, prepare the wellbore for 1670
production, and lift and control all substances yielded by the 1671
reservoir to the surface of the earth. 1672

(i) For the purposes of division (B) (42) (q) of this 1673
section, the "thing transferred" includes, but is not limited 1674
to, any of the following: 1675

(I) Services provided in the construction of permanent 1676
access roads, services provided in the construction of the well 1677
site, and services provided in the construction of temporary 1678
impoundments; 1679

(II) Equipment and rigging used for the specific purpose 1680
of creating with integrity a wellbore pathway to underground 1681
reservoirs; 1682

(III) Drilling and workover services used to work within a 1683
subsurface wellbore, and tangible personal property directly 1684
used in providing such services; 1685

(IV) Casing, tubulars, and float and centralizing 1686

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| equipment; | 1687 |
| (V) Trailers to which production equipment is attached; | 1688 |
| (VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services; | 1689 1690 1691 |
| (VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services; | 1692 1693 1694 |
| (VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole; | 1695 1696 1697 1698 |
| (IX) Pressure pumping equipment; | 1699 |
| (X) Artificial lift systems equipment; | 1700 |
| (XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water; | 1701 1702 1703 |
| (XII) Tangible personal property directly used to control production equipment. | 1704 1705 |
| (ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following: | 1706 1707 1708 |
| (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; | 1709 1710 1711 |
| (II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well | 1712 1713 |

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| stimulation as defined in section 1509.01 of the Revised Code; | 1714 |
| (III) Tangible personal property used primarily in | 1715 |
| preparing, installing, or reclaiming foundations for drilling or | 1716 |
| pumping equipment or well stimulation material tanks; | 1717 |
| (IV) Tangible personal property used primarily in | 1718 |
| transporting, delivering, or removing equipment to or from the | 1719 |
| well site or storing such equipment before its use at the well | 1720 |
| site; | 1721 |
| (V) Tangible personal property used primarily in gathering | 1722 |
| operations occurring off the well site, including gathering | 1723 |
| pipelines transporting hydrocarbon gas or liquids away from a | 1724 |
| crude oil or natural gas production facility; | 1725 |
| (VI) Tangible personal property that is to be incorporated | 1726 |
| into a structure or improvement to real property; | 1727 |
| (VII) Well site fencing, lighting, or security systems; | 1728 |
| (VIII) Communication devices or services; | 1729 |
| (IX) Office supplies; | 1730 |
| (X) Trailers used as offices or lodging; | 1731 |
| (XI) Motor vehicles of any kind; | 1732 |
| (XII) Tangible personal property used primarily for the | 1733 |
| storage of drilling byproducts and fuel not used for production; | 1734 |
| (XIII) Tangible personal property used primarily as a | 1735 |
| safety device; | 1736 |
| (XIV) Data collection or monitoring devices; | 1737 |
| (XV) Access ladders, stairs, or platforms attached to | 1738 |
| storage tanks. | 1739 |

The enumeration of tangible personal property in division 1740
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 1741
and any tangible personal property not so enumerated shall not 1742
necessarily be construed to be a "thing transferred" for the 1743
purposes of division (B) (42) (q) of this section. 1744

The commissioner shall adopt and promulgate rules under 1745
sections 119.01 to 119.13 of the Revised Code that the 1746
commissioner deems necessary to administer division (B) (42) (q) 1747
of this section. 1748

As used in division (B) (42) of this section, "thing" 1749
includes all transactions included in divisions (B) (3) (a), (b), 1750
and (e) of section 5739.01 of the Revised Code. 1751

(43) Sales conducted through a coin operated device that 1752
activates vacuum equipment or equipment that dispenses water, 1753
whether or not in combination with soap or other cleaning agents 1754
or wax, to the consumer for the consumer's use on the premises 1755
in washing, cleaning, or waxing a motor vehicle, provided no 1756
other personal property or personal service is provided as part 1757
of the transaction. 1758

(44) Sales of replacement and modification parts for 1759
engines, airframes, instruments, and interiors in, and paint 1760
for, aircraft used primarily in a fractional aircraft ownership 1761
program, and sales of services for the repair, modification, and 1762
maintenance of such aircraft, and machinery, equipment, and 1763
supplies primarily used to provide those services. 1764

(45) Sales of telecommunications service that is used 1765
directly and primarily to perform the functions of a call 1766
center. As used in this division, "call center" means any 1767
physical location where telephone calls are placed or received 1768

in high volume for the purpose of making sales, marketing, 1769
customer service, technical support, or other specialized 1770
business activity, and that employs at least fifty individuals 1771
that engage in call center activities on a full-time basis, or 1772
sufficient individuals to fill fifty full-time equivalent 1773
positions. 1774

(46) Sales by a telecommunications service vendor of 900 1775
service to a subscriber. This division does not apply to 1776
information services. 1777

(47) Sales of value-added non-voice data service. This 1778
division does not apply to any similar service that is not 1779
otherwise a telecommunications service. 1780

(48) Sales of feminine hygiene products. 1781

(49) Sales of materials, parts, equipment, or engines used 1782
in the repair or maintenance of aircraft or avionics systems of 1783
such aircraft, and sales of repair, remodeling, replacement, or 1784
maintenance services in this state performed on aircraft or on 1785
an aircraft's avionics, engine, or component materials or parts. 1786
As used in division (B) (49) of this section, "aircraft" means 1787
aircraft of more than six thousand pounds maximum certified 1788
takeoff weight or used exclusively in general aviation. 1789

(50) Sales of full flight simulators that are used for 1790
pilot or flight-crew training, sales of repair or replacement 1791
parts or components, and sales of repair or maintenance services 1792
for such full flight simulators. "Full flight simulator" means a 1793
replica of a specific type, or make, model, and series of 1794
aircraft cockpit. It includes the assemblage of equipment and 1795
computer programs necessary to represent aircraft operations in 1796
ground and flight conditions, a visual system providing an out- 1797

of-the-cockpit view, and a system that provides cues at least 1798
equivalent to those of a three-degree-of-freedom motion system, 1799
and has the full range of capabilities of the systems installed 1800
in the device as described in appendices A and B of part 60 of 1801
chapter 1 of title 14 of the Code of Federal Regulations. 1802

(51) Any transfer or lease of tangible personal property 1803
between the state and JobsOhio in accordance with section 1804
4313.02 of the Revised Code. 1805

(52) (a) Sales to a qualifying corporation. 1806

(b) As used in division (B) (52) of this section: 1807

(i) "Qualifying corporation" means a nonprofit corporation 1808
organized in this state that leases from an eligible county 1809
land, buildings, structures, fixtures, and improvements to the 1810
land that are part of or used in a public recreational facility 1811
used by a major league professional athletic team or a class A 1812
to class AAA minor league affiliate of a major league 1813
professional athletic team for a significant portion of the 1814
team's home schedule, provided the following apply: 1815

(I) The facility is leased from the eligible county 1816
pursuant to a lease that requires substantially all of the 1817
revenue from the operation of the business or activity conducted 1818
by the nonprofit corporation at the facility in excess of 1819
operating costs, capital expenditures, and reserves to be paid 1820
to the eligible county at least once per calendar year. 1821

(II) Upon dissolution and liquidation of the nonprofit 1822
corporation, all of its net assets are distributable to the 1823
board of commissioners of the eligible county from which the 1824
corporation leases the facility. 1825

(ii) "Eligible county" has the same meaning as in section 1826

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| 307.695 of the Revised Code. | 1827 |
| (53) Sales to or by a cable service provider, video | 1828 |
| service provider, or radio or television broadcast station | 1829 |
| regulated by the federal government of cable service or | 1830 |
| programming, video service or programming, audio service or | 1831 |
| programming, or electronically transferred digital audiovisual | 1832 |
| or audio work. As used in division (B) (53) of this section, | 1833 |
| "cable service" and "cable service provider" have the same | 1834 |
| meanings as in section 1332.01 of the Revised Code, and "video | 1835 |
| service," "video service provider," and "video programming" have | 1836 |
| the same meanings as in section 1332.21 of the Revised Code. | 1837 |
| (54) Sales of a digital audio work electronically | 1838 |
| transferred for delivery through use of a machine, such as a | 1839 |
| juke box, that does all of the following: | 1840 |
| (a) Accepts direct payments to operate; | 1841 |
| (b) Automatically plays a selected digital audio work for | 1842 |
| a single play upon receipt of a payment described in division | 1843 |
| (B) (54) (a) of this section; | 1844 |
| (c) Operates exclusively for the purpose of playing | 1845 |
| digital audio works in a commercial establishment. | 1846 |
| (55) (a) Sales of the following occurring on the first | 1847 |
| Friday of August and the following Saturday and Sunday of each | 1848 |
| year, beginning in 2018: | 1849 |
| (i) An item of clothing, the price of which is seventy- | 1850 |
| five dollars or less; | 1851 |
| (ii) An item of school supplies, the price of which is | 1852 |
| twenty dollars or less; | 1853 |
| (iii) An item of school instructional material, the price | 1854 |

of which is twenty dollars or less. 1855

(b) As used in division (B) (55) of this section: 1856

(i) "Clothing" means all human wearing apparel suitable 1857
for general use. "Clothing" includes, but is not limited to, 1858
aprons, household and shop; athletic supporters; baby receiving 1859
blankets; bathing suits and caps; beach capes and coats; belts 1860
and suspenders; boots; coats and jackets; costumes; adult 1861
diapers, ~~children and adult~~, including disposable diapers; 1862
earmuffs; footlets; formal wear; garters and garter belts; 1863
girdles; gloves and mittens for general use; hats and caps; 1864
hosiery; insoles for shoes; lab coats; neckties; overshoes; 1865
pantyhose; rainwear; rubber pants; sandals; scarves; shoes and 1866
shoe laces; slippers; sneakers; socks and stockings; steel-toed 1867
shoes; underwear; uniforms, athletic and nonathletic; and 1868
wedding apparel. "Clothing" does not include items purchased for 1869
use in a trade or business; clothing accessories or equipment; 1870
protective equipment; sports or recreational equipment; belt 1871
buckles sold separately; costume masks sold separately; patches 1872
and emblems sold separately; sewing equipment and supplies 1873
including, but not limited to, knitting needles, patterns, pins, 1874
scissors, sewing machines, sewing needles, tape measures, and 1875
thimbles; and sewing materials that become part of "clothing" 1876
including, but not limited to, buttons, fabric, lace, thread, 1877
yarn, and zippers. 1878

(ii) "School supplies" means items commonly used by a 1879
student in a course of study. "School supplies" includes only 1880
the following items: binders; book bags; calculators; cellophane 1881
tape; blackboard chalk; compasses; composition books; crayons; 1882
erasers; folders, expandable, pocket, plastic, and manila; glue, 1883
paste, and paste sticks; highlighters; index cards; index card 1884

boxes; legal pads; lunch boxes; markers; notebooks; paper, 1885
loose-leaf ruled notebook paper, copy paper, graph paper, 1886
tracing paper, manila paper, colored paper, poster board, and 1887
construction paper; pencil boxes and other school supply boxes; 1888
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 1889
and writing tablets. "School supplies" does not include any item 1890
purchased for use in a trade or business. 1891

(iii) "School instructional material" means written 1892
material commonly used by a student in a course of study as a 1893
reference and to learn the subject being taught. "School 1894
instructional material" includes only the following items: 1895
reference books, reference maps and globes, textbooks, and 1896
workbooks. "School instructional material" does not include any 1897
material purchased for use in a trade or business. 1898

~~(56) (a)~~ (56) Sales of adult diapers or incontinence 1899
underpads sold pursuant to a prescription, for the benefit of a 1900
medicaid recipient with a diagnosis of incontinence, and by a 1901
medicaid provider that maintains a valid provider agreement 1902
under section 5164.30 of the Revised Code with the department of 1903
medicaid, provided that the medicaid program covers adult 1904
diapers or incontinence underpads as an incontinence garment. 1905

~~(b)~~ As used in division ~~(B) (56) (a)~~ (B) (56) of this 1906
section:— 1907

~~(i) "Diaper" means an absorbent garment worn by humans who 1908
are incapable of, or have difficulty, controlling their bladder 1909
or bowel movements.— 1910~~

~~(ii) "Incontinence", "incontinence underpad" means an 1911
absorbent product, not worn on the body, designed to protect 1912
furniture or other tangible personal property from soiling or 1913~~

damage due to human incontinence. 1914

(57) Sales of investment metal bullion and investment 1915
coins. "Investment metal bullion" means any bullion described in 1916
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 1917
whether that bullion is in the physical possession of a trustee. 1918
"Investment coin" means any coin composed primarily of gold, 1919
silver, platinum, or palladium. 1920

(58) Sales of tangible personal property used primarily 1921
for any of the following purposes by a megaproject operator at 1922
the site of a megaproject that satisfies the criteria described 1923
in division (A) (11) (a) (ii) of section 122.17 of the Revised 1924
Code, provided that the sale occurs during the period that the 1925
megaproject operator has an agreement for such megaproject with 1926
the tax credit authority under division (D) of section 122.17 of 1927
the Revised Code that remains in effect and has not expired or 1928
been terminated: 1929

(a) To store, transmit, convey, distribute, recycle, 1930
circulate, or clean water, steam, or other gases used in or 1931
produced as a result of manufacturing activity, including items 1932
that support or aid in the operation of such property; 1933

(b) To clean or prepare inventory, at any stage of storage 1934
or production, or equipment used in a manufacturing activity, 1935
including chemicals, solvents, catalysts, soaps, and other items 1936
that support or aid in the operation of property; 1937

(c) To regulate, treat, filter, condition, improve, clean, 1938
maintain, or monitor environmental conditions within areas where 1939
manufacturing activities take place; 1940

(d) To handle, transport, or convey inventory during 1941
production or manufacturing. 1942

(59) Documentary services charges imposed pursuant to 1943
section 4517.261 or 4781.24 of the Revised Code. 1944

(60) Sales of children's diapers, child restraint devices 1945
or booster seats for use in motor vehicles, baby carriers, 1946
strollers, cribs, including portable cribs, and baby monitors. 1947
As used in division (B) (60) of this section, "baby monitor" 1948
means an audio or video system designed and marketed to allow an 1949
individual to monitor a baby in a different room of the same 1950
building. 1951

(C) For the purpose of the proper administration of this 1952
chapter, and to prevent the evasion of the tax, it is presumed 1953
that all sales made in this state are subject to the tax until 1954
the contrary is established. 1955

(D) The tax collected by the vendor from the consumer 1956
under this chapter is not part of the price, but is a tax 1957
collection for the benefit of the state, and of counties levying 1958
an additional sales tax pursuant to section 5739.021 or 5739.026 1959
of the Revised Code and of transit authorities levying an 1960
additional sales tax pursuant to section 5739.023 of the Revised 1961
Code. Except for the discount authorized under section 5739.12 1962
of the Revised Code and the effects of any rounding pursuant to 1963
section 5703.055 of the Revised Code, no person other than the 1964
state or such a county or transit authority shall derive any 1965
benefit from the collection or payment of the tax levied by this 1966
section or section 5739.021, 5739.023, or 5739.026 of the 1967
Revised Code. 1968

Section 2. That existing sections 5739.01 and 5739.02 of 1969
the Revised Code are hereby repealed. 1970

Section 3. The amendment by this act of sections 5739.01 1971

and 5739.02 of the Revised Code applies on and after the first 1972
day of the first month after the effective date of this section. 1973