

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 52

Senator Gavarone

A BILL

To amend section 5739.02 of the Revised Code to 1
exempt sales of United States and Ohio flags 2
from sales and use tax. 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or

work done;	79
(6) (a) Sales of motor fuel upon receipt, use,	80
distribution, or sale of which in this state a tax is imposed by	81
the law of this state, but this exemption shall not apply to the	82
sale of motor fuel on which a refund of the tax is allowable	83
under division (A) of section 5735.14 of the Revised Code; and	84
the tax commissioner may deduct the amount of tax levied by this	85
section applicable to the price of motor fuel when granting a	86
refund of motor fuel tax pursuant to division (A) of section	87
5735.14 of the Revised Code and shall cause the amount deducted	88
to be paid into the general revenue fund of this state;	89
(b) Sales of motor fuel other than that described in	90
division (B) (6) (a) of this section and used for powering a	91
refrigeration unit on a vehicle other than one used primarily to	92
provide comfort to the operator or occupants of the vehicle.	93
(7) Sales of natural gas by a natural gas company or	94
municipal gas utility, of water by a water-works company, or of	95
steam by a heating company, if in each case the thing sold is	96
delivered to consumers through pipes or conduits, and all sales	97
of communications services by a telegraph company, all terms as	98
defined in section 5727.01 of the Revised Code, and sales of	99
electricity delivered through wires;	100
(8) Casual sales by a person, or auctioneer employed	101
directly by the person to conduct such sales, except as to such	102
sales of motor vehicles, watercraft or outboard motors required	103
to be titled under section 1548.06 of the Revised Code,	104
watercraft documented with the United States coast guard,	105
snowmobiles, and all-purpose vehicles as defined in section	106
4519.01 of the Revised Code;	107

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

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

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

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

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

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

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

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

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

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

or producing livestock; building materials and services sold to 200
a construction contractor for incorporation into a house of 201
public worship or religious education, or a building used 202
exclusively for charitable purposes under a construction 203
contract with an organization whose purpose is as described in 204
division (B) (12) of this section; building materials and 205
services sold to a construction contractor for incorporation 206
into a building under a construction contract with an 207
organization exempt from taxation under section 501(c) (3) of the 208
Internal Revenue Code of 1986 when the building is to be used 209
exclusively for the organization's exempt purposes; building and 210
construction materials sold for incorporation into the original 211
construction of a sports facility under section 307.696 of the 212
Revised Code; building and construction materials and services 213
sold to a construction contractor for incorporation into real 214
property outside this state if such materials and services, when 215
sold to a construction contractor in the state in which the real 216
property is located for incorporation into real property in that 217
state, would be exempt from a tax on sales levied by that state; 218
building and construction materials for incorporation into a 219
transportation facility pursuant to a public-private agreement 220
entered into under sections 5501.70 to 5501.83 of the Revised 221
Code; until one calendar year after the construction of a 222
convention center that qualifies for property tax exemption 223
under section 5709.084 of the Revised Code is completed, 224
building and construction materials and services sold to a 225
construction contractor for incorporation into the real property 226
comprising that convention center; and building and construction 227
materials sold for incorporation into a structure or improvement 228
to real property that is used primarily as, or primarily in 229
support of, a manufacturing facility or research and development 230
facility and that is to be owned by a megaproject operator upon 231

completion and located at the site of a megaproject that 232
satisfies the criteria described in division (A) (11) (a) (ii) of 233
section 122.17 of the Revised Code, provided that the sale 234
occurs during the period that the megaproject operator has an 235
agreement for such megaproject with the tax credit authority 236
under division (D) of section 122.17 of the Revised Code that 237
remains in effect and has not expired or been terminated. 238

(14) Sales of ships or vessels or rail rolling stock used 239
or to be used principally in interstate or foreign commerce, and 240
repairs, alterations, fuel, and lubricants for such ships or 241
vessels or rail rolling stock; 242

(15) Sales to persons primarily engaged in any of the 243
activities mentioned in division (B) (42) (a), (g), or (h) of this 244
section, to persons engaged in making retail sales, or to 245
persons who purchase for sale from a manufacturer tangible 246
personal property that was produced by the manufacturer in 247
accordance with specific designs provided by the purchaser, of 248
packages, including material, labels, and parts for packages, 249
and of machinery, equipment, and material for use primarily in 250
packaging tangible personal property produced for sale, 251
including any machinery, equipment, and supplies used to make 252
labels or packages, to prepare packages or products for 253
labeling, or to label packages or products, by or on the order 254
of the person doing the packaging, or sold at retail. "Packages" 255
includes bags, baskets, cartons, crates, boxes, cans, bottles, 256
bindings, wrappings, and other similar devices and containers, 257
but does not include motor vehicles or bulk tanks, trailers, or 258
similar devices attached to motor vehicles. "Packaging" means 259
placing in a package. Division (B) (15) of this section does not 260
apply to persons engaged in highway transportation for hire. 261

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

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption primarily in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption primarily in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

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

(19) Sales of prosthetic devices, durable medical	292
equipment for home use, or mobility enhancing equipment, when	293
made pursuant to a prescription and when such devices or	294
equipment are for use by a human being.	295
(20) Sales of emergency and fire protection vehicles and	296
equipment to nonprofit organizations for use solely in providing	297
fire protection and emergency services, including trauma care	298
and emergency medical services, for political subdivisions of	299
the state;	300
(21) Sales of tangible personal property manufactured in	301
this state, if sold by the manufacturer in this state to a	302
retailer for use in the retail business of the retailer outside	303
of this state and if possession is taken from the manufacturer	304
by the purchaser within this state for the sole purpose of	305
immediately removing the same from this state in a vehicle owned	306
by the purchaser;	307
(22) Sales of services provided by the state or any of its	308
political subdivisions, agencies, instrumentalities,	309
institutions, or authorities, or by governmental entities of the	310
state or any of its political subdivisions, agencies,	311
instrumentalities, institutions, or authorities;	312
(23) Sales of motor vehicles to nonresidents of this state	313
under the circumstances described in division (B) of section	314
5739.029 of the Revised Code;	315
(24) Sales to persons engaged in the preparation of eggs	316
for sale of tangible personal property used or consumed directly	317
in such preparation, including such tangible personal property	318
used for cleaning, sanitizing, preserving, grading, sorting, and	319
classifying by size; packages, including material and parts for	320

packages, and machinery, equipment, and material for use in	321
packaging eggs for sale; and handling and transportation	322
equipment and parts therefor, except motor vehicles licensed to	323
operate on public highways, used in intraplant or interplant	324
transfers or shipment of eggs in the process of preparation for	325
sale, when the plant or plants within or between which such	326
transfers or shipments occur are operated by the same person.	327
"Packages" includes containers, cases, baskets, flats, fillers,	328
filler flats, cartons, closure materials, labels, and labeling	329
materials, and "packaging" means placing therein.	330
(25) (a) Sales of water to a consumer for residential use;	331
(b) Sales of water by a nonprofit corporation engaged	332
exclusively in the treatment, distribution, and sale of water to	333
consumers, if such water is delivered to consumers through pipes	334
or tubing.	335
(26) Fees charged for inspection or reinspection of motor	336
vehicles under section 3704.14 of the Revised Code;	337
(27) Sales to persons licensed to conduct a food service	338
operation pursuant to section 3717.43 of the Revised Code, of	339
tangible personal property primarily used directly for the	340
following:	341
(a) To prepare food for human consumption for sale;	342
(b) To preserve food that has been or will be prepared for	343
human consumption for sale by the food service operator, not	344
including tangible personal property used to display food for	345
selection by the consumer;	346
(c) To clean tangible personal property used to prepare or	347
serve food for human consumption for sale.	348

(28) Sales of animals by nonprofit animal adoption	349
services or county humane societies;	350
(29) Sales of services to a corporation described in	351
division (A) of section 5709.72 of the Revised Code, and sales	352
of tangible personal property that qualifies for exemption from	353
taxation under section 5709.72 of the Revised Code;	354
(30) Sales and installation of agricultural land tile, as	355
defined in division (B) (5) (a) of section 5739.01 of the Revised	356
Code;	357
(31) Sales and erection or installation of portable grain	358
bins, as defined in division (B) (5) (b) of section 5739.01 of the	359
Revised Code;	360
(32) The sale, lease, repair, and maintenance of, parts	361
for, or items attached to or incorporated in, motor vehicles	362
that are primarily used for transporting tangible personal	363
property belonging to others by a person engaged in highway	364
transportation for hire, except for packages and packaging used	365
for the transportation of tangible personal property;	366
(33) Sales to the state headquarters of any veterans'	367
organization in this state that is either incorporated and	368
issued a charter by the congress of the United States or is	369
recognized by the United States veterans administration, for use	370
by the headquarters;	371
(34) Sales to a telecommunications service vendor, mobile	372
telecommunications service vendor, or satellite broadcasting	373
service vendor of tangible personal property and services used	374
directly and primarily in transmitting, receiving, switching, or	375
recording any interactive, one- or two-way electromagnetic	376
communications, including voice, image, data, and information,	377

through the use of any medium, including, but not limited to, 378
poles, wires, cables, switching equipment, computers, and record 379
storage devices and media, and component parts for the tangible 380
personal property. The exemption provided in this division shall 381
be in lieu of all other exemptions under division (B) (42) (a) or 382
(n) of this section to which the vendor may otherwise be 383
entitled, based upon the use of the thing purchased in providing 384
the telecommunications, mobile telecommunications, or satellite 385
broadcasting service. 386

(35) (a) Sales where the purpose of the consumer is to use 387
or consume the things transferred in making retail sales and 388
consisting of newspaper inserts, catalogues, coupons, flyers, 389
gift certificates, or other advertising material that prices and 390
describes tangible personal property offered for retail sale. 391

(b) Sales to direct marketing vendors of preliminary 392
materials such as photographs, artwork, and typesetting that 393
will be used in printing advertising material; and of printed 394
matter that offers free merchandise or chances to win sweepstake 395
prizes and that is mailed to potential customers with 396
advertising material described in division (B) (35) (a) of this 397
section; 398

(c) Sales of equipment such as telephones, computers, 399
facsimile machines, and similar tangible personal property 400
primarily used to accept orders for direct marketing retail 401
sales. 402

(d) Sales of automatic food vending machines that preserve 403
food with a shelf life of forty-five days or less by 404
refrigeration and dispense it to the consumer. 405

For purposes of division (B) (35) of this section, "direct 406

marketing" means the method of selling where consumers order 407
tangible personal property by United States mail, delivery 408
service, or telecommunication and the vendor delivers or ships 409
the tangible personal property sold to the consumer from a 410
warehouse, catalogue distribution center, or similar fulfillment 411
facility by means of the United States mail, delivery service, 412
or common carrier. 413

(36) Sales to a person engaged in the business of 414
horticulture or producing livestock of materials to be 415
incorporated into a horticulture structure or livestock 416
structure; 417

(37) Sales of personal computers, computer monitors, 418
computer keyboards, modems, and other peripheral computer 419
equipment to an individual who is licensed or certified to teach 420
in an elementary or a secondary school in this state for use by 421
that individual in preparation for teaching elementary or 422
secondary school students; 423

(38) Sales of tangible personal property that is not 424
required to be registered or licensed under the laws of this 425
state to a citizen of a foreign nation that is not a citizen of 426
the United States, provided the property is delivered to a 427
person in this state that is not a related member of the 428
purchaser, is physically present in this state for the sole 429
purpose of temporary storage and package consolidation, and is 430
subsequently delivered to the purchaser at a delivery address in 431
a foreign nation. As used in division (B)(38) of this section, 432
"related member" has the same meaning as in section 5733.042 of 433
the Revised Code, and "temporary storage" means the storage of 434
tangible personal property for a period of not more than sixty 435
days. 436

(39) Sales of used manufactured homes and used mobile 437
homes, as defined in section 5739.0210 of the Revised Code, made 438
on or after January 1, 2000; 439

(40) Sales of tangible personal property and services to a 440
provider of electricity used or consumed directly and primarily 441
in generating, transmitting, or distributing electricity for use 442
by others, including property that is or is to be incorporated 443
into and will become a part of the consumer's production, 444
transmission, or distribution system and that retains its 445
classification as tangible personal property after 446
incorporation; fuel or power used in the production, 447
transmission, or distribution of electricity; energy conversion 448
equipment as defined in section 5727.01 of the Revised Code; and 449
tangible personal property and services used in the repair and 450
maintenance of the production, transmission, or distribution 451
system, including only those motor vehicles as are specially 452
designed and equipped for such use. The exemption provided in 453
this division shall be in lieu of all other exemptions in 454
division (B) (42) (a) or (n) of this section to which a provider 455
of electricity may otherwise be entitled based on the use of the 456
tangible personal property or service purchased in generating, 457
transmitting, or distributing electricity. 458

(41) Sales to a person providing services under division 459
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 460
personal property and services used directly and primarily in 461
providing taxable services under that section. 462

(42) Sales where the purpose of the purchaser is to do any 463
of the following: 464

(a) To incorporate the thing transferred as a material or 465
a part into tangible personal property to be produced for sale 466

by manufacturing, assembling, processing, or refining; or to use 467
or consume the thing transferred directly in producing tangible 468
personal property for sale by mining, including, without 469
limitation, the extraction from the earth of all substances that 470
are classed geologically as minerals, or directly in the 471
rendition of a public utility service, except that the sales tax 472
levied by this section shall be collected upon all meals, 473
drinks, and food for human consumption sold when transporting 474
persons. This paragraph does not exempt from "retail sale" or 475
"sales at retail" the sale of tangible personal property that is 476
to be incorporated into a structure or improvement to real 477
property. 478

(b) To hold the thing transferred as security for the 479
performance of an obligation of the vendor; 480

(c) To resell, hold, use, or consume the thing transferred 481
as evidence of a contract of insurance; 482

(d) To use or consume the thing directly in commercial 483
fishing; 484

(e) To incorporate the thing transferred as a material or 485
a part into, or to use or consume the thing transferred directly 486
in the production of, magazines distributed as controlled 487
circulation publications; 488

(f) To use or consume the thing transferred in the 489
production and preparation in suitable condition for market and 490
sale of printed, imprinted, overprinted, lithographic, 491
multilithic, blueprinted, photostatic, or other productions or 492
reproductions of written or graphic matter; 493

(g) To use the thing transferred, as described in section 494
5739.011 of the Revised Code, primarily in a manufacturing 495

operation to produce tangible personal property for sale;	496
(h) To use the benefit of a warranty, maintenance or	497
service contract, or similar agreement, as described in division	498
(B) (7) of section 5739.01 of the Revised Code, to repair or	499
maintain tangible personal property, if all of the property that	500
is the subject of the warranty, contract, or agreement would not	501
be subject to the tax imposed by this section;	502
(i) To use the thing transferred as qualified research and	503
development equipment;	504
(j) To use or consume the thing transferred primarily in	505
storing, transporting, mailing, or otherwise handling purchased	506
sales inventory in a warehouse, distribution center, or similar	507
facility when the inventory is primarily distributed outside	508
this state to retail stores of the person who owns or controls	509
the warehouse, distribution center, or similar facility, to	510
retail stores of an affiliated group of which that person is a	511
member, or by means of direct marketing. This division does not	512
apply to motor vehicles registered for operation on the public	513
highways. As used in this division, "affiliated group" has the	514
same meaning as in division (B) (3) (e) of section 5739.01 of the	515
Revised Code and "direct marketing" has the same meaning as in	516
division (B) (35) of this section.	517
(k) To use or consume the thing transferred to fulfill a	518
contractual obligation incurred by a warrantor pursuant to a	519
warranty provided as a part of the price of the tangible	520
personal property sold or by a vendor of a warranty, maintenance	521
or service contract, or similar agreement the provision of which	522
is defined as a sale under division (B) (7) of section 5739.01 of	523
the Revised Code;	524

(l) To use or consume the thing transferred in the	525
production of a newspaper for distribution to the public;	526
(m) To use tangible personal property to perform a service	527
listed in division (B)(3) of section 5739.01 of the Revised	528
Code, if the property is or is to be permanently transferred to	529
the consumer of the service as an integral part of the	530
performance of the service;	531
(n) To use or consume the thing transferred primarily in	532
producing tangible personal property for sale by farming,	533
agriculture, horticulture, or floriculture. Persons engaged in	534
rendering farming, agriculture, horticulture, or floriculture	535
services for others are deemed engaged primarily in farming,	536
agriculture, horticulture, or floriculture. This paragraph does	537
not exempt from "retail sale" or "sales at retail" the sale of	538
tangible personal property that is to be incorporated into a	539
structure or improvement to real property.	540
(o) To use or consume the thing transferred in acquiring,	541
formatting, editing, storing, and disseminating data or	542
information by electronic publishing;	543
(p) To provide the thing transferred to the owner or	544
lessee of a motor vehicle that is being repaired or serviced, if	545
the thing transferred is a rented motor vehicle and the	546
purchaser is reimbursed for the cost of the rented motor vehicle	547
by a manufacturer, warrantor, or provider of a maintenance,	548
service, or other similar contract or agreement, with respect to	549
the motor vehicle that is being repaired or serviced;	550
(q) To use or consume the thing transferred directly in	551
production of crude oil and natural gas for sale. Persons	552
engaged in rendering production services for others are deemed	553

engaged in production. 554

As used in division (B) (42) (q) of this section, 555
"production" means operations and tangible personal property 556
directly used to expose and evaluate an underground reservoir 557
that may contain hydrocarbon resources, prepare the wellbore for 558
production, and lift and control all substances yielded by the 559
reservoir to the surface of the earth. 560

(i) For the purposes of division (B) (42) (q) of this 561
section, the "thing transferred" includes, but is not limited 562
to, any of the following: 563

(I) Services provided in the construction of permanent 564
access roads, services provided in the construction of the well 565
site, and services provided in the construction of temporary 566
impoundments; 567

(II) Equipment and rigging used for the specific purpose 568
of creating with integrity a wellbore pathway to underground 569
reservoirs; 570

(III) Drilling and workover services used to work within a 571
subsurface wellbore, and tangible personal property directly 572
used in providing such services; 573

(IV) Casing, tubulars, and float and centralizing 574
equipment; 575

(V) Trailers to which production equipment is attached; 576

(VI) Well completion services, including cementing of 577
casing, and tangible personal property directly used in 578
providing such services; 579

(VII) Wireline evaluation, mud logging, and perforation 580
services, and tangible personal property directly used in 581

providing such services;	582
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	583 584 585 586
(IX) Pressure pumping equipment;	587
(X) Artificial lift systems equipment;	588
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	589 590 591
(XII) Tangible personal property directly used to control production equipment.	592 593
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	594 595 596
(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;	597 598 599
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	600 601 602
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	603 604 605
(IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well	606 607 608

site;	609
(V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility;	610 611 612 613
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	614 615
(VII) Well site fencing, lighting, or security systems;	616
(VIII) Communication devices or services;	617
(IX) Office supplies;	618
(X) Trailers used as offices or lodging;	619
(XI) Motor vehicles of any kind;	620
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	621 622
(XIII) Tangible personal property used primarily as a safety device;	623 624
(XIV) Data collection or monitoring devices;	625
(XV) Access ladders, stairs, or platforms attached to storage tanks.	626 627
The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section.	628 629 630 631 632
The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the	633 634

commissioner deems necessary to administer division (B) (42) (q) 635
of this section. 636

As used in division (B) (42) of this section, "thing" 637
includes all transactions included in divisions (B) (3) (a), (b), 638
and (e) of section 5739.01 of the Revised Code. 639

(43) Sales conducted through a coin operated device that 640
activates vacuum equipment or equipment that dispenses water, 641
whether or not in combination with soap or other cleaning agents 642
or wax, to the consumer for the consumer's use on the premises 643
in washing, cleaning, or waxing a motor vehicle, provided no 644
other personal property or personal service is provided as part 645
of the transaction. 646

(44) Sales of replacement and modification parts for 647
engines, airframes, instruments, and interiors in, and paint 648
for, aircraft used primarily in a fractional aircraft ownership 649
program, and sales of services for the repair, modification, and 650
maintenance of such aircraft, and machinery, equipment, and 651
supplies primarily used to provide those services. 652

(45) Sales of telecommunications service that is used 653
directly and primarily to perform the functions of a call 654
center. As used in this division, "call center" means any 655
physical location where telephone calls are placed or received 656
in high volume for the purpose of making sales, marketing, 657
customer service, technical support, or other specialized 658
business activity, and that employs at least fifty individuals 659
that engage in call center activities on a full-time basis, or 660
sufficient individuals to fill fifty full-time equivalent 661
positions. 662

(46) Sales by a telecommunications service vendor of 900 663

service to a subscriber. This division does not apply to 664
information services. 665

(47) Sales of value-added non-voice data service. This 666
division does not apply to any similar service that is not 667
otherwise a telecommunications service. 668

(48) Sales of feminine hygiene products. 669

(49) Sales of materials, parts, equipment, or engines used 670
in the repair or maintenance of aircraft or avionics systems of 671
such aircraft, and sales of repair, remodeling, replacement, or 672
maintenance services in this state performed on aircraft or on 673
an aircraft's avionics, engine, or component materials or parts. 674
As used in division (B) (49) of this section, "aircraft" means 675
aircraft of more than six thousand pounds maximum certified 676
takeoff weight or used exclusively in general aviation. 677

(50) Sales of full flight simulators that are used for 678
pilot or flight-crew training, sales of repair or replacement 679
parts or components, and sales of repair or maintenance services 680
for such full flight simulators. "Full flight simulator" means a 681
replica of a specific type, or make, model, and series of 682
aircraft cockpit. It includes the assemblage of equipment and 683
computer programs necessary to represent aircraft operations in 684
ground and flight conditions, a visual system providing an out- 685
of-the-cockpit view, and a system that provides cues at least 686
equivalent to those of a three-degree-of-freedom motion system, 687
and has the full range of capabilities of the systems installed 688
in the device as described in appendices A and B of part 60 of 689
chapter 1 of title 14 of the Code of Federal Regulations. 690

(51) Any transfer or lease of tangible personal property 691
between the state and JobsOhio in accordance with section 692

4313.02 of the Revised Code.	693
(52) (a) Sales to a qualifying corporation.	694
(b) As used in division (B) (52) of this section:	695
(i) "Qualifying corporation" means a nonprofit corporation	696
organized in this state that leases from an eligible county	697
land, buildings, structures, fixtures, and improvements to the	698
land that are part of or used in a public recreational facility	699
used by a major league professional athletic team or a class A	700
to class AAA minor league affiliate of a major league	701
professional athletic team for a significant portion of the	702
team's home schedule, provided the following apply:	703
(I) The facility is leased from the eligible county	704
pursuant to a lease that requires substantially all of the	705
revenue from the operation of the business or activity conducted	706
by the nonprofit corporation at the facility in excess of	707
operating costs, capital expenditures, and reserves to be paid	708
to the eligible county at least once per calendar year.	709
(II) Upon dissolution and liquidation of the nonprofit	710
corporation, all of its net assets are distributable to the	711
board of commissioners of the eligible county from which the	712
corporation leases the facility.	713
(ii) "Eligible county" has the same meaning as in section	714
307.695 of the Revised Code.	715
(53) Sales to or by a cable service provider, video	716
service provider, or radio or television broadcast station	717
regulated by the federal government of cable service or	718
programming, video service or programming, audio service or	719
programming, or electronically transferred digital audiovisual	720
or audio work. As used in division (B) (53) of this section,	721

"cable service" and "cable service provider" have the same 722
meanings as in section 1332.01 of the Revised Code, and "video 723
service," "video service provider," and "video programming" have 724
the same meanings as in section 1332.21 of the Revised Code. 725

(54) Sales of a digital audio work electronically 726
transferred for delivery through use of a machine, such as a 727
juke box, that does all of the following: 728

(a) Accepts direct payments to operate; 729

(b) Automatically plays a selected digital audio work for 730
a single play upon receipt of a payment described in division 731
(B) (54) (a) of this section; 732

(c) Operates exclusively for the purpose of playing 733
digital audio works in a commercial establishment. 734

(55) (a) Sales of the following occurring on the first 735
Friday of August and the following Saturday and Sunday of each 736
year, beginning in 2018: 737

(i) An item of clothing, the price of which is seventy- 738
five dollars or less; 739

(ii) An item of school supplies, the price of which is 740
twenty dollars or less; 741

(iii) An item of school instructional material, the price 742
of which is twenty dollars or less. 743

(b) As used in division (B) (55) of this section: 744

(i) "Clothing" means all human wearing apparel suitable 745
for general use. "Clothing" includes, but is not limited to, 746
aprons, household and shop; athletic supporters; baby receiving 747
blankets; bathing suits and caps; beach capes and coats; belts 748

and suspenders; boots; coats and jackets; costumes; diapers, 749
children and adult, including disposable diapers; earmuffs; 750
footlets; formal wear; garters and garter belts; girdles; gloves 751
and mittens for general use; hats and caps; hosiery; insoles for 752
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 753
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 754
sneakers; socks and stockings; steel-toed shoes; underwear; 755
uniforms, athletic and nonathletic; and wedding apparel. 756
"Clothing" does not include items purchased for use in a trade 757
or business; clothing accessories or equipment; protective 758
equipment; sports or recreational equipment; belt buckles sold 759
separately; costume masks sold separately; patches and emblems 760
sold separately; sewing equipment and supplies including, but 761
not limited to, knitting needles, patterns, pins, scissors, 762
sewing machines, sewing needles, tape measures, and thimbles; 763
and sewing materials that become part of "clothing" including, 764
but not limited to, buttons, fabric, lace, thread, yarn, and 765
zippers. 766

(ii) "School supplies" means items commonly used by a 767
student in a course of study. "School supplies" includes only 768
the following items: binders; book bags; calculators; cellophane 769
tape; blackboard chalk; compasses; composition books; crayons; 770
erasers; folders, expandable, pocket, plastic, and manila; glue, 771
paste, and paste sticks; highlighters; index cards; index card 772
boxes; legal pads; lunch boxes; markers; notebooks; paper, 773
loose-leaf ruled notebook paper, copy paper, graph paper, 774
tracing paper, manila paper, colored paper, poster board, and 775
construction paper; pencil boxes and other school supply boxes; 776
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 777
and writing tablets. "School supplies" does not include any item 778
purchased for use in a trade or business. 779

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

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

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

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

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

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

(58) Sales of tangible personal property used primarily

for any of the following purposes by a megaproject operator at 809
the site of a megaproject that satisfies the criteria described 810
in division (A) (11) (a) (ii) of section 122.17 of the Revised 811
Code, provided that the sale occurs during the period that the 812
megaproject operator has an agreement for such megaproject with 813
the tax credit authority under division (D) of section 122.17 of 814
the Revised Code that remains in effect and has not expired or 815
been terminated: 816

(a) To store, transmit, convey, distribute, recycle, 817
circulate, or clean water, steam, or other gases used in or 818
produced as a result of manufacturing activity, including items 819
that support or aid in the operation of such property; 820

(b) To clean or prepare inventory, at any stage of storage 821
or production, or equipment used in a manufacturing activity, 822
including chemicals, solvents, catalysts, soaps, and other items 823
that support or aid in the operation of property; 824

(c) To regulate, treat, filter, condition, improve, clean, 825
maintain, or monitor environmental conditions within areas where 826
manufacturing activities take place; 827

(d) To handle, transport, or convey inventory during 828
production or manufacturing. 829

(59) Documentary services charges imposed pursuant to 830
section 4517.261 or 4781.24 of the Revised Code; 831

(60) Sales of the flag of the United States and the flag 832
of Ohio. As used in division (B) (60) of this section, "flag" 833
means a light, flexible material bearing one or more symbols or 834
designs. 835

(C) For the purpose of the proper administration of this 836
chapter, and to prevent the evasion of the tax, it is presumed 837

that all sales made in this state are subject to the tax until 838
the contrary is established. 839

(D) The tax collected by the vendor from the consumer 840
under this chapter is not part of the price, but is a tax 841
collection for the benefit of the state, and of counties levying 842
an additional sales tax pursuant to section 5739.021 or 5739.026 843
of the Revised Code and of transit authorities levying an 844
additional sales tax pursuant to section 5739.023 of the Revised 845
Code. Except for the discount authorized under section 5739.12 846
of the Revised Code and the effects of any rounding pursuant to 847
section 5703.055 of the Revised Code, no person other than the 848
state or such a county or transit authority shall derive any 849
benefit from the collection or payment of the tax levied by this 850
section or section 5739.021, 5739.023, or 5739.026 of the 851
Revised Code. 852

Section 2. That existing section 5739.02 of the Revised 853
Code is hereby repealed. 854

Section 3. The amendment by this act of section 5739.02 of 855
the Revised Code applies on and after the first day of the first 856
month that begins after the effective date of this section. 857