

As Introduced

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H. B. No. 762

**Representatives Lear, Thomas, D.
Cosponsor: Representative Fischer**

To amend section 5739.02 of the Revised Code to 1
exempt certain vending machine food purchases 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 including either of the following:

(a) Sales or rentals of tangible personal property by construction contractors or subcontractors to provide temporary traffic control or temporary structures, including material and equipment used to comply with the Ohio manual of uniform traffic control devices adopted pursuant to section 4511.09 of the Revised Code, whereby the state or any of its political subdivisions take title to, or permanent or temporary possession of, such tangible personal property for use by the state or any of its political subdivisions, including for use by the general public thereof;

(b) Sales of services by construction contractors or subcontractors to provide temporary traffic control or structures, including labor used to comply with the Ohio manual of uniform traffic control devices adopted pursuant to section 4511.09 of the Revised Code, whereby the state or any of its political subdivisions, including the general public thereof, receive the benefit of such services.

As used in divisions (B) (1) (a) and (b) of this section, "temporary structures" include temporary roads, bridges, drains, and pavement.

(2) Sales of food for human consumption off the premises where sold; including sales of food dispensed from a vending machine or micro market.

As used in division (B) (2) of this section:

(a) "Vending machine" means an automated machine that dispenses food to consumers after cash, credit card, or other form of payment is inserted into the machine or payment is otherwise made.

(b) "Micro market" means a self-service, unmanned retail environment, where individuals can purchase food at self-checkout kiosk by cash, credit card, or other form of payment.

(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 108
work done; 109

(6) (a) Sales of motor fuel upon receipt, use, 110
distribution, or sale of which in this state a tax is imposed by 111
the law of this state, but this exemption shall not apply to the 112
sale of motor fuel on which a refund of the tax is allowable 113
under division (A) of section 5735.14 of the Revised Code; and 114
the tax commissioner may deduct the amount of tax levied by this 115
section applicable to the price of motor fuel when granting a 116
refund of motor fuel tax pursuant to division (A) of section 117
5735.14 of the Revised Code and shall cause the amount deducted 118
to be paid into the general revenue fund of this state; 119

(b) Sales of motor fuel other than that described in 120
division (B) (6) (a) of this section and used for powering a 121
refrigeration unit on a vehicle other than one used primarily to 122
provide comfort to the operator or occupants of the vehicle. 123

(7) Sales of natural gas by a natural gas company or 124
municipal gas utility, of water by a water-works company, or of 125
steam by a heating company, if in each case the thing sold is 126
delivered to consumers through pipes or conduits, and all sales 127
of communications services by a telegraph company, all terms as 128
defined in section 5727.01 of the Revised Code, and sales of 129
electricity delivered through wires; 130

(8) Casual sales by a person, or auctioneer employed 131
directly by the person to conduct such sales, except as to such 132
sales of motor vehicles, watercraft or outboard motors required 133
to be titled under section 1548.06 of the Revised Code, 134
watercraft documented with the United States coast guard, 135
snowmobiles, and all-purpose vehicles as defined in section 136
4519.01 of the Revised Code; 137

(9) (a) Sales of services or tangible personal property, 138
other than motor vehicles, mobile homes, and manufactured homes, 139
by churches, organizations exempt from taxation under section 140
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 141
organizations operated exclusively for charitable purposes as 142
defined in division (B) (12) of this section, provided that the 143
number of days on which such tangible personal property or 144
services, other than items never subject to the tax, are sold 145
does not exceed six in any calendar year, except as otherwise 146
provided in division (B) (9) (b) of this section. If the number of 147
days on which such sales are made exceeds six in any calendar 148
year, the church or organization shall be considered to be 149
engaged in business and all subsequent sales by it shall be 150
subject to the tax. In counting the number of days, all sales by 151
groups within a church or within an organization shall be 152
considered to be sales of that church or organization. 153

(b) The limitation on the number of days on which tax- 154
exempt sales may be made by a church or organization under 155
division (B) (9) (a) of this section does not apply to sales made 156
by student clubs and other groups of students of a primary or 157
secondary school, or a parent-teacher association, booster 158
group, or similar organization that raises money to support or 159
fund curricular or extracurricular activities of a primary or 160
secondary school. 161

(c) Divisions (B) (9) (a) and (b) of this section do not 162
apply to sales by a noncommercial educational radio or 163
television broadcasting station. 164

(10) Sales not within the taxing power of this state under 165
the Constitution or laws of the United States or the 166
Constitution of this state including either of the following: 167

(a) Sales or rentals of tangible personal property by 168
construction contractors or subcontractors to provide temporary 169
traffic control or temporary structures, including material and 170
equipment used to comply with the Ohio manual of uniform traffic 171
control devices adopted pursuant to section 4511.09 of the 172
Revised Code, whereby the United States takes title to, or 173
permanent or temporary possession of, such tangible personal 174
property for use by the United States including for use by the 175
general public thereof; 176

(b) Sales of services by construction contractors or 177
subcontractors to provide temporary traffic control or 178
structures, including labor used to comply with the Ohio manual 179
of uniform traffic control devices adopted pursuant to section 180
4511.09 of the Revised Code, whereby the United States, 181
including the general public thereof, receives the benefit of 182
such services. 183

As used in divisions (B) (10) (a) and (b) of this section, 184
"temporary structures" include temporary roads, bridges, drains, 185
and pavement. 186

(11) Except for transactions that are sales under division 187
(B) (3) (p) of section 5739.01 of the Revised Code, the 188
transportation of persons or property, unless the transportation 189
is by a private investigation and security service; 190

(12) Sales of tangible personal property or services to 191
churches, to organizations exempt from taxation under section 192
501(c) (3) of the Internal Revenue Code of 1986, and to any other 193
nonprofit organizations operated exclusively for charitable 194
purposes in this state, no part of the net income of which 195
inures to the benefit of any private shareholder or individual, 196
and no substantial part of the activities of which consists of 197

carrying on propaganda or otherwise attempting to influence 198
legislation; sales to offices administering one or more homes 199
for the aged or one or more hospital facilities exempt under 200
section 140.08 of the Revised Code; and sales to organizations 201
described in division (D) of section 5709.12 of the Revised 202
Code. 203

"Charitable purposes" means the relief of poverty; the 204
improvement of health through the alleviation of illness, 205
disease, or injury; the operation of an organization exclusively 206
for the provision of professional, laundry, printing, and 207
purchasing services to hospitals or charitable institutions; the 208
operation of a home for the aged, as defined in section 5701.13 209
of the Revised Code; the operation of a radio or television 210
broadcasting station that is licensed by the federal 211
communications commission as a noncommercial educational radio 212
or television station; the operation of a nonprofit animal 213
adoption service or a county humane society; the promotion of 214
education by an institution of learning that maintains a faculty 215
of qualified instructors, teaches regular continuous courses of 216
study, and confers a recognized diploma upon completion of a 217
specific curriculum; the operation of a parent-teacher 218
association, booster group, or similar organization primarily 219
engaged in the promotion and support of the curricular or 220
extracurricular activities of a primary or secondary school; the 221
operation of a community or area center in which presentations 222
in music, dramatics, the arts, and related fields are made in 223
order to foster public interest and education therein; the 224
production of performances in music, dramatics, and the arts; or 225
the promotion of education by an organization engaged in 226
carrying on research in, or the dissemination of, scientific and 227
technological knowledge and information primarily for the 228

public.	229
Nothing in this division shall be deemed to exempt sales	230
to any organization for use in the operation or carrying on of a	231
trade or business, or sales to a home for the aged for use in	232
the operation of independent living facilities as defined in	233
division (A) of section 5709.12 of the Revised Code.	234
(13) Building and construction materials and services sold	235
to construction contractors for incorporation into a structure	236
or improvement to real property under a construction contract	237
with this state or a political subdivision of this state, or	238
with the United States government or any of its agencies;	239
building and construction materials and services sold to	240
construction contractors for incorporation into a structure or	241
improvement to real property that are accepted for ownership by	242
this state or any of its political subdivisions, or by the	243
United States government or any of its agencies at the time of	244
completion of the structures or improvements; building and	245
construction materials sold to construction contractors for	246
incorporation into a horticulture structure or livestock	247
structure for a person engaged in the business of horticulture	248
or producing livestock; building materials and services sold to	249
a construction contractor for incorporation into a house of	250
public worship or religious education, or a building used	251
exclusively for charitable purposes under a construction	252
contract with an organization whose purpose is as described in	253
division (B)(12) of this section; building materials and	254
services sold to a construction contractor for incorporation	255
into a building under a construction contract with an	256
organization exempt from taxation under section 501(c)(3) of the	257
Internal Revenue Code of 1986 when the building is to be used	258
exclusively for the organization's exempt purposes; tangible	259

personal property sold for incorporation into the construction 260
of a sports facility under section 307.696 of the Revised Code; 261
building and construction materials and services sold to a 262
construction contractor for incorporation into real property 263
outside this state if such materials and services, when sold to 264
a construction contractor in the state in which the real 265
property is located for incorporation into real property in that 266
state, would be exempt from a tax on sales levied by that state; 267
building and construction materials for incorporation into a 268
transportation facility pursuant to a public-private agreement 269
entered into under sections 5501.70 to 5501.83 of the Revised 270
Code; until one calendar year after the construction of a 271
convention center that qualifies for property tax exemption 272
under section 5709.084 of the Revised Code is completed, 273
building and construction materials and services sold to a 274
construction contractor for incorporation into the real property 275
comprising that convention center; and building and construction 276
materials sold for incorporation into a structure or improvement 277
to real property that is used primarily as, or primarily in 278
support of, a manufacturing facility or research and development 279
facility and that is to be owned by a megaproject operator upon 280
completion and located at the site of a megaproject that 281
satisfies the criteria described in division (A) (11) (a) (ii) of 282
section 122.17 of the Revised Code, provided that the sale 283
occurs during the period that the megaproject operator has an 284
agreement for such megaproject with the tax credit authority 285
under division (D) of section 122.17 of the Revised Code that 286
remains in effect and has not expired or been terminated. 287

 This division does not apply to building and construction 288
materials and services sold to construction contractors for 289
incorporation into a structure or improvement to real property 290

under a construction contract with a port authority if the 291
contract is subject to section 4582.72 of the Revised Code but 292
approval from the appropriate board of county commissioners, as 293
required by that section, has not been obtained. 294

(14) Sales of ships or vessels or rail rolling stock used 295
or to be used principally in interstate or foreign commerce, and 296
repairs, alterations, fuel, and lubricants for such ships or 297
vessels or rail rolling stock; 298

(15) Sales to persons primarily engaged in any of the 299
activities mentioned in division (B)(42)(a), (g), or (h) of this 300
section, to persons engaged in making retail sales, or to 301
persons who purchase for sale from a manufacturer tangible 302
personal property that was produced by the manufacturer in 303
accordance with specific designs provided by the purchaser, of 304
packages, including material, labels, and parts for packages, 305
and of machinery, equipment, and material for use primarily in 306
packaging tangible personal property produced for sale, 307
including any machinery, equipment, and supplies used to make 308
labels or packages, to prepare packages or products for 309
labeling, or to label packages or products, by or on the order 310
of the person doing the packaging, or sold at retail. "Packages" 311
includes bags, baskets, cartons, crates, boxes, cans, bottles, 312
bindings, wrappings, and other similar devices and containers, 313
but does not include motor vehicles or bulk tanks, trailers, or 314
similar devices attached to motor vehicles. "Packaging" means 315
placing in a package. Division (B)(15) of this section does not 316
apply to persons engaged in highway transportation for hire. 317

(16) Sales of food to persons using supplemental nutrition 318
assistance program benefits to purchase the food. As used in 319
this division, "food" has the same meaning as in 7 U.S.C. 2012 320

and federal regulations adopted pursuant to the Food and 321
Nutrition Act of 2008. 322

(17) Sales to persons engaged in farming, agriculture, 323
horticulture, or floriculture, of tangible personal property for 324
use or consumption primarily in the production by farming, 325
agriculture, horticulture, or floriculture of other tangible 326
personal property for use or consumption primarily in the 327
production of tangible personal property for sale by farming, 328
agriculture, horticulture, or floriculture; or material and 329
parts for incorporation into any such tangible personal property 330
for use or consumption in production; and of tangible personal 331
property for such use or consumption in the conditioning or 332
holding of products produced by and for such use, consumption, 333
or sale by persons engaged in farming, agriculture, 334
horticulture, or floriculture, except where such property is 335
incorporated into real property; 336

(18) Sales of drugs for a human being that may be 337
dispensed only pursuant to a prescription; insulin as recognized 338
in the official United States pharmacopoeia; urine and blood 339
testing materials when used by diabetics or persons with 340
hypoglycemia to test for glucose or acetone; hypodermic syringes 341
and needles when used by diabetics for insulin injections; 342
epoetin alfa when purchased for use in the treatment of persons 343
with medical disease; hospital beds when purchased by hospitals, 344
nursing homes, or other medical facilities; and medical oxygen 345
and medical oxygen-dispensing equipment when purchased by 346
hospitals, nursing homes, or other medical facilities; 347

(19) Sales of prosthetic devices, durable medical 348
equipment for home use, or mobility enhancing equipment, when 349
made pursuant to a prescription and when such devices or 350

equipment are for use by a human being.	351
(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;	352 353 354 355 356
(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;	357 358 359 360 361 362 363
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	364 365 366 367 368
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	369 370 371
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to	372 373 374 375 376 377 378 379

operate on public highways, used in intraplant or interplant 380
transfers or shipment of eggs in the process of preparation for 381
sale, when the plant or plants within or between which such 382
transfers or shipments occur are operated by the same person. 383
"Packages" includes containers, cases, baskets, flats, fillers, 384
filler flats, cartons, closure materials, labels, and labeling 385
materials, and "packaging" means placing therein. 386

(25) (a) Sales of water to a consumer for residential use; 387

(b) Sales of water by a nonprofit corporation engaged 388
exclusively in the treatment, distribution, and sale of water to 389
consumers, if such water is delivered to consumers through pipes 390
or tubing. 391

(26) Fees charged for inspection or reinspection of motor 392
vehicles under section 3704.14 of the Revised Code; 393

(27) Sales to persons licensed to conduct a food service 394
operation pursuant to section 3717.43 of the Revised Code, of 395
tangible personal property primarily used directly for the 396
following: 397

(a) To prepare food for human consumption for sale; 398

(b) To preserve food that has been or will be prepared for 399
human consumption for sale by the food service operator, not 400
including tangible personal property used to display food for 401
selection by the consumer; 402

(c) To clean tangible personal property used to prepare or 403
serve food for human consumption for sale. 404

(28) Sales of animals by nonprofit animal adoption 405
services or county humane societies; 406

(29) Sales of services to a corporation described in 407

division (A) of section 5709.72 of the Revised Code, and sales	408
of tangible personal property that qualifies for exemption from	409
taxation under section 5709.72 of the Revised Code;	410
(30) Sales and installation of agricultural land tile, as	411
defined in division (B) (5) (a) of section 5739.01 of the Revised	412
Code;	413
(31) Sales and erection or installation of portable grain	414
bins, as defined in division (B) (5) (b) of section 5739.01 of the	415
Revised Code;	416
(32) The sale, lease, repair, and maintenance of, parts	417
for, or items attached to or incorporated in, motor vehicles	418
that are primarily used for transporting tangible personal	419
property belonging to others by a person engaged in highway	420
transportation for hire, except for packages and packaging used	421
for the transportation of tangible personal property;	422
(33) Sales to the state headquarters of any veterans'	423
organization in this state that is either incorporated and	424
issued a charter by the congress of the United States or is	425
recognized by the United States veterans administration, for use	426
by the headquarters;	427
(34) Sales to a telecommunications service vendor, mobile	428
telecommunications service vendor, or satellite broadcasting	429
service vendor of tangible personal property and services used	430
directly and primarily in transmitting, receiving, switching, or	431
recording any interactive, one- or two-way electromagnetic	432
communications, including voice, image, data, and information,	433
through the use of any medium, including, but not limited to,	434
poles, wires, cables, switching equipment, computers, and record	435
storage devices and media, and component parts for the tangible	436

personal property. The exemption provided in this division shall 437
be in lieu of all other exemptions under division (B) (42) (a) or 438
(n) of this section to which the vendor may otherwise be 439
entitled, based upon the use of the thing purchased in providing 440
the telecommunications, mobile telecommunications, or satellite 441
broadcasting service. 442

(35) Sales of strollers meant for transporting children 443
from infancy to about thirty-six months of age that meet the 444
United States consumer product safety commission safety standard 445
for carriages and strollers under 16 C.F.R. 1227.2. 446

(36) Sales to a person engaged in the business of 447
horticulture or producing livestock of materials to be 448
incorporated into a horticulture structure or livestock 449
structure; 450

(37) Sales of personal computers, computer monitors, 451
computer keyboards, modems, and other peripheral computer 452
equipment to an individual who is licensed or certified to teach 453
in an elementary or a secondary school in this state for use by 454
that individual in preparation for teaching elementary or 455
secondary school students; 456

(38) Sales of tangible personal property that is not 457
required to be registered or licensed under the laws of this 458
state to a citizen of a foreign nation that is not a citizen of 459
the United States, provided the property is delivered to a 460
person in this state that is not a related member of the 461
purchaser, is physically present in this state for the sole 462
purpose of temporary storage and package consolidation, and is 463
subsequently delivered to the purchaser at a delivery address in 464
a foreign nation. As used in division (B) (38) of this section, 465
"related member" has the same meaning as in section 5733.042 of 466

the Revised Code, and "temporary storage" means the storage of 467
tangible personal property for a period of not more than sixty 468
days. 469

(39) Sales of used manufactured homes and used mobile 470
homes, as defined in section 5739.0210 of the Revised Code, made 471
on or after January 1, 2000; 472

(40) Sales of tangible personal property and services to a 473
provider of electricity used or consumed directly and primarily 474
in generating, transmitting, or distributing electricity for use 475
by others, including property that is or is to be incorporated 476
into and will become a part of the consumer's production, 477
transmission, or distribution system and that retains its 478
classification as tangible personal property after 479
incorporation; fuel or power used in the production, 480
transmission, or distribution of electricity; energy conversion 481
equipment as defined in section 5727.01 of the Revised Code; and 482
tangible personal property and services used in the repair and 483
maintenance of the production, transmission, or distribution 484
system, including only those motor vehicles as are specially 485
designed and equipped for such use. The exemption provided in 486
this division shall be in lieu of all other exemptions in 487
division (B) (42) (a) or (n) of this section to which a provider 488
of electricity may otherwise be entitled based on the use of the 489
tangible personal property or service purchased in generating, 490
transmitting, or distributing electricity. 491

(41) Sales to a person providing services under division 492
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 493
personal property and services used directly and primarily in 494
providing taxable services under that section. 495

(42) Sales where the purpose of the purchaser is to do any 496

of the following:	497
(a) To incorporate the thing transferred as a material or	498
a part into tangible personal property to be produced for sale	499
by manufacturing, assembling, processing, or refining; or to use	500
or consume the thing transferred directly in producing tangible	501
personal property for sale by mining, including, without	502
limitation, the extraction from the earth of all substances that	503
are classed geologically as minerals, or directly in the	504
rendition of a public utility service, except that the sales tax	505
levied by this section shall be collected upon all meals,	506
drinks, and food for human consumption sold when transporting	507
persons. This paragraph does not exempt from "retail sale" or	508
"sales at retail" the sale of tangible personal property that is	509
to be incorporated into a structure or improvement to real	510
property.	511
(b) To hold the thing transferred as security for the	512
performance of an obligation of the vendor;	513
(c) To resell, hold, use, or consume the thing transferred	514
as evidence of a contract of insurance;	515
(d) To use or consume the thing directly in commercial	516
fishing;	517
(e) To incorporate the thing transferred as a material or	518
a part into, or to use or consume the thing transferred directly	519
in the production of, magazines distributed as controlled	520
circulation publications;	521
(f) To use or consume the thing transferred in the	522
production and preparation in suitable condition for market and	523
sale of printed, imprinted, overprinted, lithographic,	524
multilithic, blueprinted, photostatic, or other productions or	525

reproductions of written or graphic matter;	526
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	527 528 529
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	530 531 532 533 534 535
(i) To use the thing transferred as qualified research and development equipment;	536 537
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B) (3) (e) of section 5739.01 of the Revised Code and "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.	538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555

(k) To use or consume the thing transferred to fulfill a 556
contractual obligation incurred by a warrantor pursuant to a 557
warranty provided as a part of the price of the tangible 558
personal property sold or by a vendor of a warranty, maintenance 559
or service contract, or similar agreement the provision of which 560
is defined as a sale under division (B) (7) of section 5739.01 of 561
the Revised Code; 562

(l) To use or consume the thing transferred in the 563
production of a newspaper for distribution to the public; 564

(m) To use tangible personal property to perform a service 565
listed in division (B) (3) of section 5739.01 of the Revised 566
Code, if the property is or is to be permanently transferred to 567
the consumer of the service as an integral part of the 568
performance of the service; 569

(n) To use or consume the thing transferred primarily in 570
producing tangible personal property for sale by farming, 571
agriculture, horticulture, or floriculture. Persons engaged in 572
rendering farming, agriculture, horticulture, or floriculture 573
services for others are deemed engaged primarily in farming, 574
agriculture, horticulture, or floriculture. This paragraph does 575
not exempt from "retail sale" or "sales at retail" the sale of 576
tangible personal property that is to be incorporated into a 577
structure or improvement to real property. 578

~~(q)~~ (o) To use or consume the thing transferred directly in 579
production of crude oil and natural gas for sale. Persons 580
engaged in rendering production services for others are deemed 581
engaged in production. 582

As used in division ~~(B) (42)~~ (B) (42) (o) of this section, 583
"production" means operations and tangible personal property 584

directly used to expose and evaluate an underground reservoir 585
that may contain hydrocarbon resources, prepare the wellbore for 586
production, and lift and control all substances yielded by the 587
reservoir to the surface of the earth. 588

(i) For the purposes of division ~~(B) (42) (q)~~ (B) (42) (o) of 589
this section, the "thing transferred" includes, but is not 590
limited to, any of the following: 591

(I) Services provided in the construction of permanent 592
access roads, services provided in the construction of the well 593
site, and services provided in the construction of temporary 594
impoundments; 595

(II) Equipment and rigging used for the specific purpose 596
of creating with integrity a wellbore pathway to underground 597
reservoirs; 598

(III) Drilling and workover services used to work within a 599
subsurface wellbore, and tangible personal property directly 600
used in providing such services; 601

(IV) Casing, tubulars, and float and centralizing 602
equipment; 603

(V) Trailers to which production equipment is attached; 604

(VI) Well completion services, including cementing of 605
casing, and tangible personal property directly used in 606
providing such services; 607

(VII) Wireline evaluation, mud logging, and perforation 608
services, and tangible personal property directly used in 609
providing such services; 610

(VIII) Reservoir stimulation, hydraulic fracturing, and 611
acidizing services, and tangible personal property directly used 612

in providing such services, including all material pumped	613
downhole;	614
(IX) Pressure pumping equipment;	615
(X) Artificial lift systems equipment;	616
(XI) Wellhead equipment and well site equipment used to	617
separate, stabilize, and control hydrocarbon phases and produced	618
water;	619
(XII) Tangible personal property directly used to control	620
production equipment.	621
(ii) For the purposes of division (B) (42) (q) <u>(B) (42) (o)</u> of	622
this section, the "thing transferred" does not include any of	623
the following:	624
(I) Tangible personal property used primarily in the	625
exploration and production of any mineral resource regulated	626
under Chapter 1509. of the Revised Code other than oil or gas;	627
(II) Tangible personal property used primarily in storing,	628
holding, or delivering solutions or chemicals used in well	629
stimulation as defined in section 1509.01 of the Revised Code;	630
(III) Tangible personal property used primarily in	631
preparing, installing, or reclaiming foundations for drilling or	632
pumping equipment or well stimulation material tanks;	633
(IV) Tangible personal property used primarily in	634
transporting, delivering, or removing equipment to or from the	635
well site or storing such equipment before its use at the well	636
site;	637
(V) Tangible personal property used primarily in gathering	638
operations occurring off the well site, including gathering	639

pipelines transporting hydrocarbon gas or liquids away from a	640
crude oil or natural gas production facility;	641
(VI) Tangible personal property that is to be incorporated	642
into a structure or improvement to real property;	643
(VII) Well site fencing, lighting, or security systems;	644
(VIII) Communication devices or services;	645
(IX) Office supplies;	646
(X) Trailers used as offices or lodging;	647
(XI) Motor vehicles of any kind;	648
(XII) Tangible personal property used primarily for the	649
storage of drilling byproducts and fuel not used for production;	650
(XIII) Tangible personal property used primarily as a	651
safety device;	652
(XIV) Data collection or monitoring devices;	653
(XV) Access ladders, stairs, or platforms attached to	654
storage tanks.	655
The enumeration of tangible personal property in division	656
(B) (42) (q) (ii) <u>(B) (42) (o) (ii)</u> of this section is not intended to	657
be exhaustive, and any tangible personal property not so	658
enumerated shall not necessarily be construed to be a "thing	659
transferred" for the purposes of division (B) (42) (q) <u>(B) (42) (o)</u>	660
of this section.	661
The commissioner shall adopt and promulgate rules under	662
sections 119.01 to 119.13 of the Revised Code that the	663
commissioner deems necessary to administer division (B) (42) (q)	664
<u>(B) (42) (o)</u> of this section.	665

As used in division (B) (42) of this section, "thing" 666
includes all transactions included in divisions (B) (3) (a), (b), 667
and (e) of section 5739.01 of the Revised Code. 668

(43) Sales conducted through a coin operated device that 669
activates vacuum equipment or equipment that dispenses water, 670
whether or not in combination with soap or other cleaning agents 671
or wax, to the consumer for the consumer's use on the premises 672
in washing, cleaning, or waxing a motor vehicle, provided no 673
other personal property or personal service is provided as part 674
of the transaction. 675

(44) Sales of replacement and modification parts for 676
engines, airframes, instruments, and interiors in, and paint 677
for, aircraft used primarily in a fractional aircraft ownership 678
program, and sales of services for the repair, modification, and 679
maintenance of such aircraft, and machinery, equipment, and 680
supplies primarily used to provide those services. 681

(45) The fee imposed by section 3743.22 of the Revised 682
Code, if it is separately stated on the invoice, bill of sale, 683
or similar document given by the vendor to the consumer for a 684
retail sale made in this state. 685

(46) Sales by a telecommunications service vendor of 900 686
service to a subscriber. This division does not apply to 687
information services. 688

(47) Sales of value-added non-voice data service. This 689
division does not apply to any similar service that is not 690
otherwise a telecommunications service. 691

(48) Sales of feminine hygiene products. 692

(49) Sales of materials, parts, equipment, or engines used 693
in the repair or maintenance of aircraft or avionics systems of 694

such aircraft, and sales of repair, remodeling, replacement, or 695
maintenance services in this state performed on aircraft or on 696
an aircraft's avionics, engine, or component materials or parts. 697
As used in division (B) (49) of this section, "aircraft" means 698
aircraft of more than six thousand pounds maximum certified 699
takeoff weight or used exclusively in general aviation. 700

(50) Sales of full flight simulators that are used for 701
pilot or flight-crew training, sales of repair or replacement 702
parts or components, and sales of repair or maintenance services 703
for such full flight simulators. "Full flight simulator" means a 704
replica of a specific type, or make, model, and series of 705
aircraft cockpit. It includes the assemblage of equipment and 706
computer programs necessary to represent aircraft operations in 707
ground and flight conditions, a visual system providing an out- 708
of-the-cockpit view, and a system that provides cues at least 709
equivalent to those of a three-degree-of-freedom motion system, 710
and has the full range of capabilities of the systems installed 711
in the device as described in appendices A and B of part 60 of 712
chapter 1 of title 14 of the Code of Federal Regulations. 713

(51) Any transfer or lease of tangible personal property 714
between the state and JobsOhio in accordance with section 715
4313.02 of the Revised Code. 716

(52) (a) Sales to a qualifying corporation. 717

(b) As used in division (B) (52) of this section: 718

(i) "Qualifying corporation" means a nonprofit corporation 719
organized in this state that leases from an eligible county 720
land, buildings, structures, fixtures, and improvements to the 721
land that are part of or used in a public recreational facility 722
used by a major league professional athletic team or a class A 723

to class AAA minor league affiliate of a major league 724
professional athletic team for a significant portion of the 725
team's home schedule, provided the following apply: 726

(I) The facility is leased from the eligible county 727
pursuant to a lease that requires substantially all of the 728
revenue from the operation of the business or activity conducted 729
by the nonprofit corporation at the facility in excess of 730
operating costs, capital expenditures, and reserves to be paid 731
to the eligible county at least once per calendar year. 732

(II) Upon dissolution and liquidation of the nonprofit 733
corporation, all of its net assets are distributable to the 734
board of commissioners of the eligible county from which the 735
corporation leases the facility. 736

(ii) "Eligible county" has the same meaning as in section 737
307.695 of the Revised Code. 738

(53) Sales to or by a cable service provider, video 739
service provider, or radio or television broadcast station 740
regulated by the federal government of cable service or 741
programming, video service or programming, audio service or 742
programming, or electronically transferred digital audiovisual 743
or audio work. As used in division (B) (53) of this section, 744
"cable service" and "cable service provider" have the same 745
meanings as in section 1332.01 of the Revised Code, and "video 746
service," "video service provider," and "video programming" have 747
the same meanings as in section 1332.21 of the Revised Code. 748

(54) Sales of a digital audio work electronically 749
transferred for delivery through use of a machine, such as a 750
juke box, that does all of the following: 751

(a) Accepts direct payments to operate; 752

(b) Automatically plays a selected digital audio work for	753
a single play upon receipt of a payment described in division	754
(B) (54) (a) of this section;	755
(c) Operates exclusively for the purpose of playing	756
digital audio works in a commercial establishment.	757
(55) (a) Sales of the following occurring on the first	758
Friday of August and the following Saturday and Sunday of any	759
year, except in 2024 or any subsequent year in which a sales tax	760
holiday is held pursuant to section 5739.41 of the Revised Code:	761
(i) An item of clothing, the price of which is seventy-	762
five dollars or less;	763
(ii) An item of school supplies, the price of which is	764
twenty dollars or less;	765
(iii) An item of school instructional material, the price	766
of which is twenty dollars or less.	767
(b) As used in division (B) (55) of this section:	768
(i) "Clothing" means all human wearing apparel suitable	769
for general use. "Clothing" includes, but is not limited to,	770
aprons, household and shop; athletic supporters; baby receiving	771
blankets; bathing suits and caps; beach capes and coats; belts	772
and suspenders; boots; coats and jackets; costumes; diapers,	773
children and adult, including disposable diapers; earmuffs;	774
footlets; formal wear; garters and garter belts; girdles; gloves	775
and mittens for general use; hats and caps; hosiery; insoles for	776
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	777
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	778
sneakers; socks and stockings; steel-toed shoes; underwear;	779
uniforms, athletic and nonathletic; and wedding apparel.	780
"Clothing" does not include items purchased for use in a trade	781

or business; clothing accessories or equipment; protective 782
equipment; sports or recreational equipment; belt buckles sold 783
separately; costume masks sold separately; patches and emblems 784
sold separately; sewing equipment and supplies including, but 785
not limited to, knitting needles, patterns, pins, scissors, 786
sewing machines, sewing needles, tape measures, and thimbles; 787
and sewing materials that become part of "clothing" including, 788
but not limited to, buttons, fabric, lace, thread, yarn, and 789
zippers. 790

(ii) "School supplies" means items commonly used by a 791
student in a course of study. "School supplies" includes only 792
the following items: binders; book bags; calculators; cellophane 793
tape; blackboard chalk; compasses; composition books; crayons; 794
erasers; folders, expandable, pocket, plastic, and manila; glue, 795
paste, and paste sticks; highlighters; index cards; index card 796
boxes; legal pads; lunch boxes; markers; notebooks; paper, 797
loose-leaf ruled notebook paper, copy paper, graph paper, 798
tracing paper, manila paper, colored paper, poster board, and 799
construction paper; pencil boxes and other school supply boxes; 800
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 801
and writing tablets. "School supplies" does not include any item 802
purchased for use in a trade or business. 803

(iii) "School instructional material" means written 804
material commonly used by a student in a course of study as a 805
reference and to learn the subject being taught. "School 806
instructional material" includes only the following items: 807
reference books, reference maps and globes, textbooks, and 808
workbooks. "School instructional material" does not include any 809
material purchased for use in a trade or business. 810

(56) (a) Sales of adult diapers or incontinence underpads 811

sold pursuant to a prescription, for the benefit of a medicaid 812
recipient with a diagnosis of incontinence, and by a medicaid 813
provider that maintains a valid provider agreement under section 814
5164.30 of the Revised Code with the department of medicaid, 815
provided that the medicaid program covers diapers or 816
incontinence underpads as an incontinence garment. 817

(b) As used in division (B) (56) (a) of this section, 818
"incontinence underpad" means an absorbent product, not worn on 819
the body, designed to protect furniture or other tangible 820
personal property from soiling or damage due to human 821
incontinence. 822

(57) Sales of investment metal bullion and investment 823
coins. "Investment metal bullion" means any bullion described in 824
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 825
whether that bullion is in the physical possession of a trustee. 826
"Investment coin" means any coin composed primarily of gold, 827
silver, platinum, or palladium. 828

(58) Sales of tangible personal property used primarily 829
for any of the following purposes by a megaproject operator at 830
the site of a megaproject that satisfies the criteria described 831
in division (A) (11) (a) (ii) of section 122.17 of the Revised 832
Code, provided that the sale occurs during the period that the 833
megaproject operator has an agreement for such megaproject with 834
the tax credit authority under division (D) of section 122.17 of 835
the Revised Code that remains in effect and has not expired or 836
been terminated: 837

(a) To store, transmit, convey, distribute, recycle, 838
circulate, or clean water, steam, or other gases used in or 839
produced as a result of manufacturing activity, including items 840
that support or aid in the operation of such property; 841

(b) To clean or prepare inventory, at any stage of storage	842
or production, or equipment used in a manufacturing activity,	843
including chemicals, solvents, catalysts, soaps, and other items	844
that support or aid in the operation of property;	845
(c) To regulate, treat, filter, condition, improve, clean,	846
maintain, or monitor environmental conditions within areas where	847
manufacturing activities take place;	848
(d) To handle, transport, or convey inventory during	849
production or manufacturing.	850
(59) Documentary services charges imposed pursuant to	851
section 4517.261 or 4781.24 of the Revised Code.	852
(60) Sales of children's diapers.	853
(61) Sales of therapeutic or preventative creams and wipes	854
marketed primarily for use on the skin of children.	855
(62) Sales of a child restraint device or booster seat	856
that meets the national highway traffic safety administration	857
standard for child restraint systems under 49 C.F.R. 571.213.	858
(63) Sales of cribs intended to provide sleeping	859
accommodations for children that comply with the United States	860
consumer product safety commission's safety standard for full-	861
size baby cribs under 16 C.F.R. 1219 or the commission's safety	862
standard for non-full-size baby cribs under 16 C.F.R. 1220.	863
(64) Sales of eligible tangible personal property	864
occurring during the period of a sales tax holiday held pursuant	865
to section 5739.41 of the Revised Code.	866
(C) For the purpose of the proper administration of this	867
chapter, and to prevent the evasion of the tax, it is presumed	868
that all sales made in this state are subject to the tax until	869

the contrary is established. 870

(D) The tax collected by the vendor from the consumer 871
under this chapter is not part of the price, but is a tax 872
collection for the benefit of the state, and of counties levying 873
an additional sales tax pursuant to section 5739.021 or 5739.026 874
of the Revised Code and of transit authorities levying an 875
additional sales tax pursuant to section 5739.023 of the Revised 876
Code. Except for the discount authorized under section 5739.12 877
of the Revised Code and the effects of any rounding pursuant to 878
section 5703.055 of the Revised Code, no person other than the 879
state or such a county or transit authority shall derive any 880
benefit from the collection or payment of the tax levied by this 881
section or section 5739.021, 5739.023, or 5739.026 of the 882
Revised Code. 883

Section 2. That existing section 5739.02 of the Revised 884
Code is hereby repealed. 885

Section 3. The amendment by this act of section 5739.02 of 886
the Revised Code applies on and after the first day of the first 887
month beginning after the effective date of this section. 888