

As Introduced

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S. B. No. 126

Senators Wilkin, Lang

To amend section 5739.02 of the Revised Code to
exempt from sales and use tax items purchased by
a logistics business to transport manufactured
products, general merchandise, and grocery
products.

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

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

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

(A) (1) The tax shall be collected as provided in section
5739.025 of the Revised Code. The rate of the tax shall be five

and three-fourths per cent. The tax applies and is collectible 21
when the sale is made, regardless of the time when the price is 22
paid or delivered. 23

(2) In the case of the lease or rental, with a fixed term 24
of more than thirty days or an indefinite term with a minimum 25
period of more than thirty days, of any motor vehicles designed 26
by the manufacturer to carry a load of not more than one ton, 27
watercraft, outboard motor, or aircraft, or of any tangible 28
personal property, other than motor vehicles designed by the 29
manufacturer to carry a load of more than one ton, to be used by 30
the lessee or renter primarily for business purposes, the tax 31
shall be collected by the vendor at the time the lease or rental 32
is consummated and shall be calculated by the vendor on the 33
basis of the total amount to be paid by the lessee or renter 34
under the lease agreement. If the total amount of the 35
consideration for the lease or rental includes amounts that are 36
not calculated at the time the lease or rental is executed, the 37
tax shall be calculated and collected by the vendor at the time 38
such amounts are billed to the lessee or renter. In the case of 39
an open-end lease or rental, the tax shall be calculated by the 40
vendor on the basis of the total amount to be paid during the 41
initial fixed term of the lease or rental, and for each 42
subsequent renewal period as it comes due. As used in this 43
division, "motor vehicle" has the same meaning as in section 44
4501.01 of the Revised Code, and "watercraft" includes an 45
outdrive unit attached to the watercraft. 46

A lease with a renewal clause and a termination penalty or 47
similar provision that applies if the renewal clause is not 48
exercised is presumed to be a sham transaction. In such a case, 49
the tax shall be calculated and paid on the basis of the entire 50
length of the lease period, including any renewal periods, until 51

the termination penalty or similar provision no longer applies. 52
The taxpayer shall bear the burden, by a preponderance of the 53
evidence, that the transaction or series of transactions is not 54
a sham transaction. 55

(3) Except as provided in division (A) (2) of this section, 56
in the case of a sale, the price of which consists in whole or 57
in part of the lease or rental of tangible personal property, 58
the tax shall be measured by the installments of that lease or 59
rental. 60

(4) In the case of a sale of a physical fitness facility 61
service or recreation and sports club service, the price of 62
which consists in whole or in part of a membership for the 63
receipt of the benefit of the service, the tax applicable to the 64
sale shall be measured by the installments thereof. 65

(B) The tax does not apply to the following: 66

(1) Sales to the state or any of its political 67
subdivisions, or to any other state or its political 68
subdivisions if the laws of that state exempt from taxation 69
sales made to this state and its political subdivisions 70
including either of the following: 71

(a) Sales or rentals of tangible personal property by 72
construction contractors or subcontractors to provide temporary 73
traffic control or temporary structures, including material and 74
equipment used to comply with the Ohio manual of uniform traffic 75
control devices adopted pursuant to section 4511.09 of the 76
Revised Code, whereby the state or any of its political 77
subdivisions take title to, or permanent or temporary possession 78
of, such tangible personal property for use by the state or any 79
of its political subdivisions, including for use by the general 80

public thereof; 81

(b) Sales of services by construction contractors or 82
subcontractors to provide temporary traffic control or 83
structures, including labor used to comply with the Ohio manual 84
of uniform traffic control devices adopted pursuant to section 85
4511.09 of the Revised Code, whereby the state or any of its 86
political subdivisions, including the general public thereof, 87
receive the benefit of such services. 88

As used in divisions (B) (1) (a) and (b) of this section, 89
"temporary structures" include temporary roads, bridges, drains, 90
and pavement. 91

(2) Sales of food for human consumption off the premises 92
where sold; 93

(3) Sales of food sold to students only in a cafeteria, 94
dormitory, fraternity, or sorority maintained in a private, 95
public, or parochial school, college, or university; 96

(4) Sales of newspapers and sales or transfers of 97
magazines distributed as controlled circulation publications; 98

(5) The furnishing, preparing, or serving of meals without 99
charge by an employer to an employee provided the employer 100
records the meals as part compensation for services performed or 101
work done; 102

(6) (a) Sales of motor fuel upon receipt, use, 103
distribution, or sale of which in this state a tax is imposed by 104
the law of this state, but this exemption shall not apply to the 105
sale of motor fuel on which a refund of the tax is allowable 106
under division (A) of section 5735.14 of the Revised Code; and 107
the tax commissioner may deduct the amount of tax levied by this 108
section applicable to the price of motor fuel when granting a 109

refund of motor fuel tax pursuant to division (A) of section 110
5735.14 of the Revised Code and shall cause the amount deducted 111
to be paid into the general revenue fund of this state; 112

(b) Sales of motor fuel other than that described in 113
division (B) (6) (a) of this section and used for powering a 114
refrigeration unit on a vehicle other than one used primarily to 115
provide comfort to the operator or occupants of the vehicle. 116

(7) Sales of natural gas by a natural gas company or 117
municipal gas utility, of water by a water-works company, or of 118
steam by a heating company, if in each case the thing sold is 119
delivered to consumers through pipes or conduits, and all sales 120
of communications services by a telegraph company, all terms as 121
defined in section 5727.01 of the Revised Code, and sales of 122
electricity delivered through wires; 123

(8) Casual sales by a person, or auctioneer employed 124
directly by the person to conduct such sales, except as to such 125
sales of motor vehicles, watercraft or outboard motors required 126
to be titled under section 1548.06 of the Revised Code, 127
watercraft documented with the United States coast guard, 128
snowmobiles, and all-purpose vehicles as defined in section 129
4519.01 of the Revised Code; 130

(9) (a) Sales of services or tangible personal property, 131
other than motor vehicles, mobile homes, and manufactured homes, 132
by churches, organizations exempt from taxation under section 133
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 134
organizations operated exclusively for charitable purposes as 135
defined in division (B) (12) of this section, provided that the 136
number of days on which such tangible personal property or 137
services, other than items never subject to the tax, are sold 138
does not exceed six in any calendar year, except as otherwise 139

provided in division (B) (9) (b) of this section. If the number of 140
days on which such sales are made exceeds six in any calendar 141
year, the church or organization shall be considered to be 142
engaged in business and all subsequent sales by it shall be 143
subject to the tax. In counting the number of days, all sales by 144
groups within a church or within an organization shall be 145
considered to be sales of that church or organization. 146

(b) The limitation on the number of days on which tax- 147
exempt sales may be made by a church or organization under 148
division (B) (9) (a) of this section does not apply to sales made 149
by student clubs and other groups of students of a primary or 150
secondary school, or a parent-teacher association, booster 151
group, or similar organization that raises money to support or 152
fund curricular or extracurricular activities of a primary or 153
secondary school. 154

(c) Divisions (B) (9) (a) and (b) of this section do not 155
apply to sales by a noncommercial educational radio or 156
television broadcasting station. 157

(10) Sales not within the taxing power of this state under 158
the Constitution or laws of the United States or the 159
Constitution of this state including either of the following: 160

(a) Sales or rentals of tangible personal property by 161
construction contractors or subcontractors to provide temporary 162
traffic control or temporary structures, including material and 163
equipment used to comply with the Ohio manual of uniform traffic 164
control devices adopted pursuant to section 4511.09 of the 165
Revised Code, whereby the United States takes title to, or 166
permanent or temporary possession of, such tangible personal 167
property for use by the United States including for use by the 168
general public thereof; 169

(b) Sales of services by construction contractors or 170
subcontractors to provide temporary traffic control or 171
structures, including labor used to comply with the Ohio manual 172
of uniform traffic control devices adopted pursuant to section 173
4511.09 of the Revised Code, whereby the United States, 174
including the general public thereof, receives the benefit of 175
such services. 176

As used in divisions (B) (10) (a) and (b) of this section, 177
"temporary structures" include temporary roads, bridges, drains, 178
and pavement. 179

(11) Except for transactions that are sales under division 180
(B) (3) (p) of section 5739.01 of the Revised Code, the 181
transportation of persons or property, unless the transportation 182
is by a private investigation and security service; 183

(12) Sales of tangible personal property or services to 184
churches, to organizations exempt from taxation under section 185
501(c) (3) of the Internal Revenue Code of 1986, and to any other 186
nonprofit organizations operated exclusively for charitable 187
purposes in this state, no part of the net income of which 188
inures to the benefit of any private shareholder or individual, 189
and no substantial part of the activities of which consists of 190
carrying on propaganda or otherwise attempting to influence 191
legislation; sales to offices administering one or more homes 192
for the aged or one or more hospital facilities exempt under 193
section 140.08 of the Revised Code; and sales to organizations 194
described in division (D) of section 5709.12 of the Revised 195
Code. 196

"Charitable purposes" means the relief of poverty; the 197
improvement of health through the alleviation of illness, 198
disease, or injury; the operation of an organization exclusively 199

for the provision of professional, laundry, printing, and 200
purchasing services to hospitals or charitable institutions; the 201
operation of a home for the aged, as defined in section 5701.13 202
of the Revised Code; the operation of a radio or television 203
broadcasting station that is licensed by the federal 204
communications commission as a noncommercial educational radio 205
or television station; the operation of a nonprofit animal 206
adoption service or a county humane society; the promotion of 207
education by an institution of learning that maintains a faculty 208
of qualified instructors, teaches regular continuous courses of 209
study, and confers a recognized diploma upon completion of a 210
specific curriculum; the operation of a parent-teacher 211
association, booster group, or similar organization primarily 212
engaged in the promotion and support of the curricular or 213
extracurricular activities of a primary or secondary school; the 214
operation of a community or area center in which presentations 215
in music, dramatics, the arts, and related fields are made in 216
order to foster public interest and education therein; the 217
production of performances in music, dramatics, and the arts; or 218
the promotion of education by an organization engaged in 219
carrying on research in, or the dissemination of, scientific and 220
technological knowledge and information primarily for the 221
public. 222

Nothing in this division shall be deemed to exempt sales 223
to any organization for use in the operation or carrying on of a 224
trade or business, or sales to a home for the aged for use in 225
the operation of independent living facilities as defined in 226
division (A) of section 5709.12 of the Revised Code. 227

(13) Building and construction materials and services sold 228
to construction contractors for incorporation into a structure 229
or improvement to real property under a construction contract 230

with this state or a political subdivision of this state, or 231
with the United States government or any of its agencies; 232
building and construction materials and services sold to 233
construction contractors for incorporation into a structure or 234
improvement to real property that are accepted for ownership by 235
this state or any of its political subdivisions, or by the 236
United States government or any of its agencies at the time of 237
completion of the structures or improvements; building and 238
construction materials sold to construction contractors for 239
incorporation into a horticulture structure or livestock 240
structure for a person engaged in the business of horticulture 241
or producing livestock; building materials and services sold to 242
a construction contractor for incorporation into a house of 243
public worship or religious education, or a building used 244
exclusively for charitable purposes under a construction 245
contract with an organization whose purpose is as described in 246
division (B) (12) of this section; building materials and 247
services sold to a construction contractor for incorporation 248
into a building under a construction contract with an 249
organization exempt from taxation under section 501(c) (3) of the 250
Internal Revenue Code of 1986 when the building is to be used 251
exclusively for the organization's exempt purposes; tangible 252
personal property sold for incorporation into the construction 253
of a sports facility under section 307.696 of the Revised Code; 254
building and construction materials and services sold to a 255
construction contractor for incorporation into real property 256
outside this state if such materials and services, when sold to 257
a construction contractor in the state in which the real 258
property is located for incorporation into real property in that 259
state, would be exempt from a tax on sales levied by that state; 260
building and construction materials for incorporation into a 261
transportation facility pursuant to a public-private agreement 262

entered into under sections 5501.70 to 5501.83 of the Revised 263
Code; until one calendar year after the construction of a 264
convention center that qualifies for property tax exemption 265
under section 5709.084 of the Revised Code is completed, 266
building and construction materials and services sold to a 267
construction contractor for incorporation into the real property 268
comprising that convention center; and building and construction 269
materials sold for incorporation into a structure or improvement 270
to real property that is used primarily as, or primarily in 271
support of, a manufacturing facility or research and development 272
facility and that is to be owned by a megaproject operator upon 273
completion and located at the site of a megaproject that 274
satisfies the criteria described in division (A) (11) (a) (ii) of 275
section 122.17 of the Revised Code, provided that the sale 276
occurs during the period that the megaproject operator has an 277
agreement for such megaproject with the tax credit authority 278
under division (D) of section 122.17 of the Revised Code that 279
remains in effect and has not expired or been terminated. 280

(14) Sales of ships or vessels or rail rolling stock used 281
or to be used principally in interstate or foreign commerce, and 282
repairs, alterations, fuel, and lubricants for such ships or 283
vessels or rail rolling stock; 284

(15) Sales to persons primarily engaged in any of the 285
activities mentioned in division (B) (42) (a), (g), or (h) of this 286
section, to persons engaged in making retail sales, or to 287
persons who purchase for sale from a manufacturer tangible 288
personal property that was produced by the manufacturer in 289
accordance with specific designs provided by the purchaser, of 290
packages, including material, labels, and parts for packages, 291
and of machinery, equipment, and material for use primarily in 292
packaging tangible personal property produced for sale, 293

including any machinery, equipment, and supplies used to make 294
labels or packages, to prepare packages or products for 295
labeling, or to label packages or products, by or on the order 296
of the person doing the packaging, or sold at retail. "Packages" 297
includes bags, baskets, cartons, crates, boxes, cans, bottles, 298
bindings, wrappings, and other similar devices and containers, 299
but does not include motor vehicles or bulk tanks, trailers, or 300
similar devices attached to motor vehicles. "Packaging" means 301
placing in a package. Division (B) (15) of this section does not 302
apply to persons engaged in highway transportation for hire. 303

(16) Sales of food to persons using supplemental nutrition 304
assistance program benefits to purchase the food. As used in 305
this division, "food" has the same meaning as in 7 U.S.C. 2012 306
and federal regulations adopted pursuant to the Food and 307
Nutrition Act of 2008. 308

(17) Sales to persons engaged in farming, agriculture, 309
horticulture, or floriculture, of tangible personal property for 310
use or consumption primarily in the production by farming, 311
agriculture, horticulture, or floriculture of other tangible 312
personal property for use or consumption primarily in the 313
production of tangible personal property for sale by farming, 314
agriculture, horticulture, or floriculture; or material and 315
parts for incorporation into any such tangible personal property 316
for use or consumption in production; and of tangible personal 317
property for such use or consumption in the conditioning or 318
holding of products produced by and for such use, consumption, 319
or sale by persons engaged in farming, agriculture, 320
horticulture, or floriculture, except where such property is 321
incorporated into real property; 322

(18) Sales of drugs for a human being that may be 323

dispensed only pursuant to a prescription; insulin as recognized 324
in the official United States pharmacopoeia; urine and blood 325
testing materials when used by diabetics or persons with 326
hypoglycemia to test for glucose or acetone; hypodermic syringes 327
and needles when used by diabetics for insulin injections; 328
epoetin alfa when purchased for use in the treatment of persons 329
with medical disease; hospital beds when purchased by hospitals, 330
nursing homes, or other medical facilities; and medical oxygen 331
and medical oxygen-dispensing equipment when purchased by 332
hospitals, nursing homes, or other medical facilities; 333

(19) Sales of prosthetic devices, durable medical 334
equipment for home use, or mobility enhancing equipment, when 335
made pursuant to a prescription and when such devices or 336
equipment are for use by a human being. 337

(20) Sales of emergency and fire protection vehicles and 338
equipment to nonprofit organizations for use solely in providing 339
fire protection and emergency services, including trauma care 340
and emergency medical services, for political subdivisions of 341
the state; 342

(21) Sales of tangible personal property manufactured in 343
this state, if sold by the manufacturer in this state to a 344
retailer for use in the retail business of the retailer outside 345
of this state and if possession is taken from the manufacturer 346
by the purchaser within this state for the sole purpose of 347
immediately removing the same from this state in a vehicle owned 348
by the purchaser; 349

(22) Sales of services provided by the state or any of its 350
political subdivisions, agencies, instrumentalities, 351
institutions, or authorities, or by governmental entities of the 352
state or any of its political subdivisions, agencies, 353

instrumentalities, institutions, or authorities; 354

(23) Sales of motor vehicles to nonresidents of this state 355
under the circumstances described in division (B) of section 356
5739.029 of the Revised Code; 357

(24) Sales to persons engaged in the preparation of eggs 358
for sale of tangible personal property used or consumed directly 359
in such preparation, including such tangible personal property 360
used for cleaning, sanitizing, preserving, grading, sorting, and 361
classifying by size; packages, including material and parts for 362
packages, and machinery, equipment, and material for use in 363
packaging eggs for sale; and handling and transportation 364
equipment and parts therefor, except motor vehicles licensed to 365
operate on public highways, used in intraplant or interplant 366
transfers or shipment of eggs in the process of preparation for 367
sale, when the plant or plants within or between which such 368
transfers or shipments occur are operated by the same person. 369
"Packages" includes containers, cases, baskets, flats, fillers, 370
filler flats, cartons, closure materials, labels, and labeling 371
materials, and "packaging" means placing therein. 372

(25) (a) Sales of water to a consumer for residential use; 373

(b) Sales of water by a nonprofit corporation engaged 374
exclusively in the treatment, distribution, and sale of water to 375
consumers, if such water is delivered to consumers through pipes 376
or tubing. 377

(26) Fees charged for inspection or reinspection of motor 378
vehicles under section 3704.14 of the Revised Code; 379

(27) Sales to persons licensed to conduct a food service 380
operation pursuant to section 3717.43 of the Revised Code, of 381
tangible personal property primarily used directly for the 382

following:	383
(a) To prepare food for human consumption for sale;	384
(b) To preserve food that has been or will be prepared for	385
human consumption for sale by the food service operator, not	386
including tangible personal property used to display food for	387
selection by the consumer;	388
(c) To clean tangible personal property used to prepare or	389
serve food for human consumption for sale.	390
(28) Sales of animals by nonprofit animal adoption	391
services or county humane societies;	392
(29) Sales of services to a corporation described in	393
division (A) of section 5709.72 of the Revised Code, and sales	394
of tangible personal property that qualifies for exemption from	395
taxation under section 5709.72 of the Revised Code;	396
(30) Sales and installation of agricultural land tile, as	397
defined in division (B) (5) (a) of section 5739.01 of the Revised	398
Code;	399
(31) Sales and erection or installation of portable grain	400
bins, as defined in division (B) (5) (b) of section 5739.01 of the	401
Revised Code;	402
(32) The sale, lease, repair, and maintenance of, parts	403
for, or items attached to or incorporated in, motor vehicles	404
that are primarily used for transporting tangible personal	405
property belonging to others by a person engaged in highway	406
transportation for hire, except for packages and packaging used	407
for the transportation of tangible personal property;	408
(33) Sales to the state headquarters of any veterans'	409
organization in this state that is either incorporated and	410

issued a charter by the congress of the United States or is 411
recognized by the United States veterans administration, for use 412
by the headquarters; 413

(34) Sales to a telecommunications service vendor, mobile 414
telecommunications service vendor, or satellite broadcasting 415
service vendor of tangible personal property and services used 416
directly and primarily in transmitting, receiving, switching, or 417
recording any interactive, one- or two-way electromagnetic 418
communications, including voice, image, data, and information, 419
through the use of any medium, including, but not limited to, 420
poles, wires, cables, switching equipment, computers, and record 421
storage devices and media, and component parts for the tangible 422
personal property. The exemption provided in this division shall 423
be in lieu of all other exemptions under division (B) (42) (a) or 424
(n) of this section to which the vendor may otherwise be 425
entitled, based upon the use of the thing purchased in providing 426
the telecommunications, mobile telecommunications, or satellite 427
broadcasting service. 428

(35) (a) Sales where the purpose of the consumer is to use 429
or consume the things transferred in making retail sales and 430
consisting of newspaper inserts, catalogues, coupons, flyers, 431
gift certificates, or other advertising material that prices and 432
describes tangible personal property offered for retail sale. 433

(b) Sales to direct marketing vendors of preliminary 434
materials such as photographs, artwork, and typesetting that 435
will be used in printing advertising material; and of printed 436
matter that offers free merchandise or chances to win sweepstake 437
prizes and that is mailed to potential customers with 438
advertising material described in division (B) (35) (a) of this 439
section; 440

(c) Sales of equipment such as telephones, computers, 441
facsimile machines, and similar tangible personal property 442
primarily used to accept orders for direct marketing retail 443
sales. 444

(d) Sales of automatic food vending machines that preserve 445
food with a shelf life of forty-five days or less by 446
refrigeration and dispense it to the consumer. 447

For purposes of division (B) (35) of this section, "direct 448
marketing" means the method of selling where consumers order 449
tangible personal property by United States mail, delivery 450
service, or telecommunication and the vendor delivers or ships 451
the tangible personal property sold to the consumer from a 452
warehouse, catalogue distribution center, or similar fulfillment 453
facility by means of the United States mail, delivery service, 454
or common carrier. 455

(36) Sales to a person engaged in the business of 456
horticulture or producing livestock of materials to be 457
incorporated into a horticulture structure or livestock 458
structure; 459

(37) Sales of personal computers, computer monitors, 460
computer keyboards, modems, and other peripheral computer 461
equipment to an individual who is licensed or certified to teach 462
in an elementary or a secondary school in this state for use by 463
that individual in preparation for teaching elementary or 464
secondary school students; 465

(38) Sales of tangible personal property that is not 466
required to be registered or licensed under the laws of this 467
state to a citizen of a foreign nation that is not a citizen of 468
the United States, provided the property is delivered to a 469

person in this state that is not a related member of the 470
purchaser, is physically present in this state for the sole 471
purpose of temporary storage and package consolidation, and is 472
subsequently delivered to the purchaser at a delivery address in 473
a foreign nation. As used in division (B)(38) of this section, 474
"related member" has the same meaning as in section 5733.042 of 475
the Revised Code, and "temporary storage" means the storage of 476
tangible personal property for a period of not more than sixty 477
days. 478

(39) Sales of used manufactured homes and used mobile 479
homes, as defined in section 5739.0210 of the Revised Code, made 480
on or after January 1, 2000; 481

(40) Sales of tangible personal property and services to a 482
provider of electricity used or consumed directly and primarily 483
in generating, transmitting, or distributing electricity for use 484
by others, including property that is or is to be incorporated 485
into and will become a part of the consumer's production, 486
transmission, or distribution system and that retains its 487
classification as tangible personal property after 488
incorporation; fuel or power used in the production, 489
transmission, or distribution of electricity; energy conversion 490
equipment as defined in section 5727.01 of the Revised Code; and 491
tangible personal property and services used in the repair and 492
maintenance of the production, transmission, or distribution 493
system, including only those motor vehicles as are specially 494
designed and equipped for such use. The exemption provided in 495
this division shall be in lieu of all other exemptions in 496
division (B)(42)(a) or (n) of this section to which a provider 497
of electricity may otherwise be entitled based on the use of the 498
tangible personal property or service purchased in generating, 499
transmitting, or distributing electricity. 500

(41) Sales to a person providing services under division 501
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 502
personal property and services used directly and primarily in 503
providing taxable services under that section. 504

(42) Sales where the purpose of the purchaser is to do any 505
of the following: 506

(a) To incorporate the thing transferred as a material or 507
a part into tangible personal property to be produced for sale 508
by manufacturing, assembling, processing, or refining; or to use 509
or consume the thing transferred directly in producing tangible 510
personal property for sale by mining, including, without 511
limitation, the extraction from the earth of all substances that 512
are classed geologically as minerals, or directly in the 513
rendition of a public utility service, except that the sales tax 514
levied by this section shall be collected upon all meals, 515
drinks, and food for human consumption sold when transporting 516
persons. This paragraph does not exempt from "retail sale" or 517
"sales at retail" the sale of tangible personal property that is 518
to be incorporated into a structure or improvement to real 519
property. 520

(b) To hold the thing transferred as security for the 521
performance of an obligation of the vendor; 522

(c) To resell, hold, use, or consume the thing transferred 523
as evidence of a contract of insurance; 524

(d) To use or consume the thing directly in commercial 525
fishing; 526

(e) To incorporate the thing transferred as a material or 527
a part into, or to use or consume the thing transferred directly 528
in the production of, magazines distributed as controlled 529

circulation publications; 530

(f) To use or consume the thing transferred in the 531
production and preparation in suitable condition for market and 532
sale of printed, imprinted, overprinted, lithographic, 533
multilithic, blueprinted, photostatic, or other productions or 534
reproductions of written or graphic matter; 535

(g) To use the thing transferred, as described in section 536
5739.011 of the Revised Code, primarily in a manufacturing 537
operation to produce tangible personal property for sale; 538

(h) To use the benefit of a warranty, maintenance or 539
service contract, or similar agreement, as described in division 540
(B) (7) of section 5739.01 of the Revised Code, to repair or 541
maintain tangible personal property, if all of the property that 542
is the subject of the warranty, contract, or agreement would not 543
be subject to the tax imposed by this section; 544

(i) To use the thing transferred as qualified research and 545
development equipment; 546

(j) To use or consume the thing transferred primarily in 547
storing, transporting, mailing, or otherwise handling purchased 548
sales inventory in a warehouse, distribution center, or similar 549
facility when the inventory is primarily distributed outside 550
this state to retail stores of the person who owns or controls 551
the warehouse, distribution center, or similar facility, to 552
retail stores of an affiliated group of which that person is a 553
member, or by means of direct marketing. This division does not 554
apply to motor vehicles registered for operation on the public 555
highways. As used in this division, "affiliated group" has the 556
same meaning as in division (B) (3) (e) of section 5739.01 of the 557
Revised Code and "direct marketing" has the same meaning as in 558

division (B) (35) of this section. 559

(k) To use or consume the thing transferred to fulfill a 560
contractual obligation incurred by a warrantor pursuant to a 561
warranty provided as a part of the price of the tangible 562
personal property sold or by a vendor of a warranty, maintenance 563
or service contract, or similar agreement the provision of which 564
is defined as a sale under division (B) (7) of section 5739.01 of 565
the Revised Code; 566

(l) To use or consume the thing transferred in the 567
production of a newspaper for distribution to the public; 568

(m) To use tangible personal property to perform a service 569
listed in division (B) (3) of section 5739.01 of the Revised 570
Code, if the property is or is to be permanently transferred to 571
the consumer of the service as an integral part of the 572
performance of the service; 573

(n) To use or consume the thing transferred primarily in 574
producing tangible personal property for sale by farming, 575
agriculture, horticulture, or floriculture. Persons engaged in 576
rendering farming, agriculture, horticulture, or floriculture 577
services for others are deemed engaged primarily in farming, 578
agriculture, horticulture, or floriculture. This paragraph does 579
not exempt from "retail sale" or "sales at retail" the sale of 580
tangible personal property that is to be incorporated into a 581
structure or improvement to real property. 582

(o) To use or consume the thing transferred in acquiring, 583
formatting, editing, storing, and disseminating data or 584
information by electronic publishing; 585

(p) To provide the thing transferred to the owner or 586
lessee of a motor vehicle that is being repaired or serviced, if 587

the thing transferred is a rented motor vehicle and the 588
purchaser is reimbursed for the cost of the rented motor vehicle 589
by a manufacturer, warrantor, or provider of a maintenance, 590
service, or other similar contract or agreement, with respect to 591
the motor vehicle that is being repaired or serviced; 592

(q) To use or consume the thing transferred directly in 593
production of crude oil and natural gas for sale. Persons 594
engaged in rendering production services for others are deemed 595
engaged in production. 596

As used in division (B) (42) (q) of this section, 597
"production" means operations and tangible personal property 598
directly used to expose and evaluate an underground reservoir 599
that may contain hydrocarbon resources, prepare the wellbore for 600
production, and lift and control all substances yielded by the 601
reservoir to the surface of the earth. 602

(i) For the purposes of division (B) (42) (q) of this 603
section, the "thing transferred" includes, but is not limited 604
to, any of the following: 605

(I) Services provided in the construction of permanent 606
access roads, services provided in the construction of the well 607
site, and services provided in the construction of temporary 608
impoundments; 609

(II) Equipment and rigging used for the specific purpose 610
of creating with integrity a wellbore pathway to underground 611
reservoirs; 612

(III) Drilling and workover services used to work within a 613
subsurface wellbore, and tangible personal property directly 614
used in providing such services; 615

(IV) Casing, tubulars, and float and centralizing 616

equipment;	617
(V) Trailers to which production equipment is attached;	618
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	619 620 621
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	622 623 624
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	625 626 627 628
(IX) Pressure pumping equipment;	629
(X) Artificial lift systems equipment;	630
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	631 632 633
(XII) Tangible personal property directly used to control production equipment.	634 635
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	636 637 638
(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;	639 640 641
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well	642 643

stimulation as defined in section 1509.01 of the Revised Code; 644

(III) Tangible personal property used primarily in 645
preparing, installing, or reclaiming foundations for drilling or 646
pumping equipment or well stimulation material tanks; 647

(IV) Tangible personal property used primarily in 648
transporting, delivering, or removing equipment to or from the 649
well site or storing such equipment before its use at the well 650
site; 651

(V) Tangible personal property used primarily in gathering 652
operations occurring off the well site, including gathering 653
pipelines transporting hydrocarbon gas or liquids away from a 654
crude oil or natural gas production facility; 655

(VI) Tangible personal property that is to be incorporated 656
into a structure or improvement to real property; 657

(VII) Well site fencing, lighting, or security systems; 658

(VIII) Communication devices or services; 659

(IX) Office supplies; 660

(X) Trailers used as offices or lodging; 661

(XI) Motor vehicles of any kind; 662

(XII) Tangible personal property used primarily for the 663
storage of drilling byproducts and fuel not used for production; 664

(XIII) Tangible personal property used primarily as a 665
safety device; 666

(XIV) Data collection or monitoring devices; 667

(XV) Access ladders, stairs, or platforms attached to 668
storage tanks. 669

The enumeration of tangible personal property in division 670
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 671
and any tangible personal property not so enumerated shall not 672
necessarily be construed to be a "thing transferred" for the 673
purposes of division (B) (42) (q) of this section. 674

The commissioner shall adopt and promulgate rules under 675
sections 119.01 to 119.13 of the Revised Code that the 676
commissioner deems necessary to administer division (B) (42) (q) 677
of this section. 678

As used in division (B) (42) of this section, "thing" 679
includes all transactions included in divisions (B) (3) (a), (b), 680
and (e) of section 5739.01 of the Revised Code. 681

(43) Sales conducted through a coin operated device that 682
activates vacuum equipment or equipment that dispenses water, 683
whether or not in combination with soap or other cleaning agents 684
or wax, to the consumer for the consumer's use on the premises 685
in washing, cleaning, or waxing a motor vehicle, provided no 686
other personal property or personal service is provided as part 687
of the transaction. 688

(44) Sales of replacement and modification parts for 689
engines, airframes, instruments, and interiors in, and paint 690
for, aircraft used primarily in a fractional aircraft ownership 691
program, and sales of services for the repair, modification, and 692
maintenance of such aircraft, and machinery, equipment, and 693
supplies primarily used to provide those services. 694

(45) Sales of telecommunications service that is used 695
directly and primarily to perform the functions of a call 696
center. As used in this division, "call center" means any 697
physical location where telephone calls are placed or received 698

in high volume for the purpose of making sales, marketing, 699
customer service, technical support, or other specialized 700
business activity, and that employs at least fifty individuals 701
that engage in call center activities on a full-time basis, or 702
sufficient individuals to fill fifty full-time equivalent 703
positions. 704

(46) Sales by a telecommunications service vendor of 900 705
service to a subscriber. This division does not apply to 706
information services. 707

(47) Sales of value-added non-voice data service. This 708
division does not apply to any similar service that is not 709
otherwise a telecommunications service. 710

(48) Sales of feminine hygiene products. 711

(49) Sales of materials, parts, equipment, or engines used 712
in the repair or maintenance of aircraft or avionics systems of 713
such aircraft, and sales of repair, remodeling, replacement, or 714
maintenance services in this state performed on aircraft or on 715
an aircraft's avionics, engine, or component materials or parts. 716
As used in division (B) (49) of this section, "aircraft" means 717
aircraft of more than six thousand pounds maximum certified 718
takeoff weight or used exclusively in general aviation. 719

(50) Sales of full flight simulators that are used for 720
pilot or flight-crew training, sales of repair or replacement 721
parts or components, and sales of repair or maintenance services 722
for such full flight simulators. "Full flight simulator" means a 723
replica of a specific type, or make, model, and series of 724
aircraft cockpit. It includes the assemblage of equipment and 725
computer programs necessary to represent aircraft operations in 726
ground and flight conditions, a visual system providing an out- 727

of-the-cockpit view, and a system that provides cues at least 728
equivalent to those of a three-degree-of-freedom motion system, 729
and has the full range of capabilities of the systems installed 730
in the device as described in appendices A and B of part 60 of 731
chapter 1 of title 14 of the Code of Federal Regulations. 732

(51) Any transfer or lease of tangible personal property 733
between the state and JobsOhio in accordance with section 734
4313.02 of the Revised Code. 735

(52) (a) Sales to a qualifying corporation. 736

(b) As used in division (B) (52) of this section: 737

(i) "Qualifying corporation" means a nonprofit corporation 738
organized in this state that leases from an eligible county 739
land, buildings, structures, fixtures, and improvements to the 740
land that are part of or used in a public recreational facility 741
used by a major league professional athletic team or a class A 742
to class AAA minor league affiliate of a major league 743
professional athletic team for a significant portion of the 744
team's home schedule, provided the following apply: 745

(I) The facility is leased from the eligible county 746
pursuant to a lease that requires substantially all of the 747
revenue from the operation of the business or activity conducted 748
by the nonprofit corporation at the facility in excess of 749
operating costs, capital expenditures, and reserves to be paid 750
to the eligible county at least once per calendar year. 751

(II) Upon dissolution and liquidation of the nonprofit 752
corporation, all of its net assets are distributable to the 753
board of commissioners of the eligible county from which the 754
corporation leases the facility. 755

(ii) "Eligible county" has the same meaning as in section 756

307.695 of the Revised Code. 757

(53) Sales to or by a cable service provider, video 758
service provider, or radio or television broadcast station 759
regulated by the federal government of cable service or 760
programming, video service or programming, audio service or 761
programming, or electronically transferred digital audiovisual 762
or audio work. As used in division (B) (53) of this section, 763
"cable service" and "cable service provider" have the same 764
meanings as in section 1332.01 of the Revised Code, and "video 765
service," "video service provider," and "video programming" have 766
the same meanings as in section 1332.21 of the Revised Code. 767

(54) Sales of a digital audio work electronically 768
transferred for delivery through use of a machine, such as a 769
juke box, that does all of the following: 770

(a) Accepts direct payments to operate; 771

(b) Automatically plays a selected digital audio work for 772
a single play upon receipt of a payment described in division 773
(B) (54) (a) of this section; 774

(c) Operates exclusively for the purpose of playing 775
digital audio works in a commercial establishment. 776

(55) (a) Sales of the following occurring on the first 777
Friday of August and the following Saturday and Sunday of any 778
year, except in 2024 or any subsequent year in which a sales tax 779
holiday is held pursuant to section 5739.41 of the Revised Code: 780

(i) An item of clothing, the price of which is seventy- 781
five dollars or less; 782

(ii) An item of school supplies, the price of which is 783
twenty dollars or less; 784

(iii) An item of school instructional material, the price 785
of which is twenty dollars or less. 786

(b) As used in division (B) (55) of this section: 787

(i) "Clothing" means all human wearing apparel suitable 788
for general use. "Clothing" includes, but is not limited to, 789
aprons, household and shop; athletic supporters; baby receiving 790
blankets; bathing suits and caps; beach capes and coats; belts 791
and suspenders; boots; coats and jackets; costumes; diapers, 792
children and adult, including disposable diapers; earmuffs; 793
footlets; formal wear; garters and garter belts; girdles; gloves 794
and mittens for general use; hats and caps; hosiery; insoles for 795
shoes; lab coats; neckties; overshoes; pantyhose; rainwear; 796
rubber pants; sandals; scarves; shoes and shoe laces; slippers; 797
sneakers; socks and stockings; steel-toed shoes; underwear; 798
uniforms, athletic and nonathletic; and wedding apparel. 799
"Clothing" does not include items purchased for use in a trade 800
or business; clothing accessories or equipment; protective 801
equipment; sports or recreational equipment; belt buckles sold 802
separately; costume masks sold separately; patches and emblems 803
sold separately; sewing equipment and supplies including, but 804
not limited to, knitting needles, patterns, pins, scissors, 805
sewing machines, sewing needles, tape measures, and thimbles; 806
and sewing materials that become part of "clothing" including, 807
but not limited to, buttons, fabric, lace, thread, yarn, and 808
zippers. 809

(ii) "School supplies" means items commonly used by a 810
student in a course of study. "School supplies" includes only 811
the following items: binders; book bags; calculators; cellophane 812
tape; blackboard chalk; compasses; composition books; crayons; 813
erasers; folders, expandable, pocket, plastic, and manila; glue, 814

paste, and paste sticks; highlighters; index cards; index card 815
boxes; legal pads; lunch boxes; markers; notebooks; paper, 816
loose-leaf ruled notebook paper, copy paper, graph paper, 817
tracing paper, manila paper, colored paper, poster board, and 818
construction paper; pencil boxes and other school supply boxes; 819
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 820
and writing tablets. "School supplies" does not include any item 821
purchased for use in a trade or business. 822

(iii) "School instructional material" means written 823
material commonly used by a student in a course of study as a 824
reference and to learn the subject being taught. "School 825
instructional material" includes only the following items: 826
reference books, reference maps and globes, textbooks, and 827
workbooks. "School instructional material" does not include any 828
material purchased for use in a trade or business. 829

(56) (a) Sales of adult diapers or incontinence underpads 830
sold pursuant to a prescription, for the benefit of a medicaid 831
recipient with a diagnosis of incontinence, and by a medicaid 832
provider that maintains a valid provider agreement under section 833
5164.30 of the Revised Code with the department of medicaid, 834
provided that the medicaid program covers diapers or 835
incontinence underpads as an incontinence garment. 836

(b) As used in division (B) (56) (a) of this section, 837
"incontinence underpad" means an absorbent product, not worn on 838
the body, designed to protect furniture or other tangible 839
personal property from soiling or damage due to human 840
incontinence. 841

(57) Sales of investment metal bullion and investment 842
coins. "Investment metal bullion" means any bullion described in 843
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 844

whether that bullion is in the physical possession of a trustee. 845
"Investment coin" means any coin composed primarily of gold, 846
silver, platinum, or palladium. 847

(58) Sales of tangible personal property used primarily 848
for any of the following purposes by a megaproject operator at 849
the site of a megaproject that satisfies the criteria described 850
in division (A) (11) (a) (ii) of section 122.17 of the Revised 851
Code, provided that the sale occurs during the period that the 852
megaproject operator has an agreement for such megaproject with 853
the tax credit authority under division (D) of section 122.17 of 854
the Revised Code that remains in effect and has not expired or 855
been terminated: 856

(a) To store, transmit, convey, distribute, recycle, 857
circulate, or clean water, steam, or other gases used in or 858
produced as a result of manufacturing activity, including items 859
that support or aid in the operation of such property; 860

(b) To clean or prepare inventory, at any stage of storage 861
or production, or equipment used in a manufacturing activity, 862
including chemicals, solvents, catalysts, soaps, and other items 863
that support or aid in the operation of property; 864

(c) To regulate, treat, filter, condition, improve, clean, 865
maintain, or monitor environmental conditions within areas where 866
manufacturing activities take place; 867

(d) To handle, transport, or convey inventory during 868
production or manufacturing. 869

(59) Documentary services charges imposed pursuant to 870
section 4517.261 or 4781.24 of the Revised Code. 871

(60) Sales of children's diapers. 872

(61) Sales of therapeutic or preventative creams and wipes marketed primarily for use on the skin of children.	873 874
(62) Sales of a child restraint device or booster seat that meets the national highway traffic safety administration standard for child restraint systems under 49 C.F.R. 571.213.	875 876 877
(63) Sales of cribs intended to provide sleeping accommodations for children that comply with the United States consumer product safety commission's safety standard for full-size baby cribs under 16 C.F.R. 1219 or the commission's safety standard for non-full-size baby cribs under 16 C.F.R. 1220.	878 879 880 881 882
(64) Sales of strollers meant for transporting children from infancy to about thirty-six months of age that meet the United States consumer product safety commission safety standard for carriages and strollers under 16 C.F.R. 1227.2.	883 884 885 886
(65) The fee imposed by section 3743.22 of the Revised Code, if it is separately stated on the invoice, bill of sale, or similar document given by the vendor to the consumer for a retail sale made in this state.	887 888 889 890
(66) Sales of eligible tangible personal property occurring during the period of a sales tax holiday held pursuant to section 5739.41 of the Revised Code.	891 892 893
<u>(67) (a) Sales of tangible personal property to a qualifying business used primarily by that business for any of the following:</u>	894 895 896
<u>(i) Transporting completed products from the manufacturing facility in which those products were manufactured to a destination from which the product will be sold at retail or a destination designated by the consumer to which those products were sold at retail;</u>	897 898 899 900 901

<u>(ii) Transporting general merchandise or grocery products</u>	902
<u>from one location within a distribution facility to another</u>	903
<u>location from which the merchandise or products will be</u>	904
<u>transported from that facility;</u>	905
<u>(iii) Powering or charging tangible personal property used</u>	906
<u>as described in division (B) (67) (a) (i) or (ii) of this section.</u>	907
<u>(b) As used in division (B) (67) of this section:</u>	908
<u>(i) "Qualifying business" means a person that is</u>	909
<u>classified as being in the transportation and warehousing sector</u>	910
<u>or the warehouse club and supercenter sector by the north</u>	911
<u>American industry classification system, or a person in that</u>	912
<u>person's affiliated group, and that person or affiliate is</u>	913
<u>engaged in transporting tangible personal property in trucks</u>	914
<u>operated and either owned or leased by the person or affiliate</u>	915
<u>to destinations outside this state.</u>	916
<u>(ii) "Truck" means any motor vehicle that has motor power</u>	917
<u>and is designed and used for carrying merchandise or freight, or</u>	918
<u>that is used as a commercial tractor. "Truck" includes a motor</u>	919
<u>vehicle powered by one or more alternative fuels provided it is</u>	920
<u>designed and used as described in this division.</u>	921
<u>(iii) "Completed product" and "manufacturing facility"</u>	922
<u>have the same meanings as in section 5739.011 of the Revised</u>	923
<u>Code.</u>	924
<u>(iv) "Alternative fuel" has the same meaning as in section</u>	925
<u>125.831 of the Revised Code.</u>	926
<u>(v) "Motor vehicle" and "commercial tractor" have the same</u>	927
<u>meanings as in section 4501.01 of the Revised Code.</u>	928
<u>(vi) "Affiliated group" has the same meaning as in</u>	929

division (B) (3) (e) of section 5739.01 of the Revised Code. 930

(C) For the purpose of the proper administration of this 931
chapter, and to prevent the evasion of the tax, it is presumed 932
that all sales made in this state are subject to the tax until 933
the contrary is established. 934

(D) The tax collected by the vendor from the consumer 935
under this chapter is not part of the price, but is a tax 936
collection for the benefit of the state, and of counties levying 937
an additional sales tax pursuant to section 5739.021 or 5739.026 938
of the Revised Code and of transit authorities levying an 939
additional sales tax pursuant to section 5739.023 of the Revised 940
Code. Except for the discount authorized under section 5739.12 941
of the Revised Code and the effects of any rounding pursuant to 942
section 5703.055 of the Revised Code, no person other than the 943
state or such a county or transit authority shall derive any 944
benefit from the collection or payment of the tax levied by this 945
section or section 5739.021, 5739.023, or 5739.026 of the 946
Revised Code. 947

Section 2. That existing section 5739.02 of the Revised 948
Code is hereby repealed. 949

Section 3. The amendment by this act of section 5739.02 of 950
the Revised Code applies on and after the first day of the first 951
month following the effective date of this section. 952