

As Introduced

**136th General Assembly
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S. B. No. 367

Senator Brenner

To amend sections 4582.72, 5739.02, and 5739.03 of
the Revised Code to allow a sales and use tax
exemption for materials and services purchased
for certain projects when a port authority or
county refuses to endorse an agreement
concerning the project.

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

Section 1. That sections 4582.72, 5739.02, and 5739.03 of
the Revised Code be amended to read as follows:

Sec. 4582.72. (A) As used in this section, "minimally
acceptable investments" means both of the following, together:

(1) Expenditures of at least twenty-five million dollars
for the construction or renovation of improvements to real
property;

(2) Obligations to fully or partially finance or otherwise
cause to be completed public infrastructure improvements in the
area surrounding that property.

(B) Notwithstanding any other provision of this chapter,
no port authority created under section 4582.02 or 4582.22 of
the Revised Code shall enter an agreement providing for the
construction or renovation of improvements to real property

located outside of the port authority's jurisdiction to which 21
all of the following applies without first obtaining approval 22
from the board of county commissioners in the county where the 23
property is located or, if the property is located in more than 24
one county, from the board of county commissioners of each 25
county in which the property is located: 26

~~(A)~~ (1) The agreement is with a ~~non-public~~ nonpublic 27
entity. 28

~~(B)~~ (2) The majority of the floor space of the improvements 29
that are the subject of the agreement will not be occupied by 30
the port authority upon completion of the construction or 31
renovation. 32

~~(C)~~ (3) Building materials purchased for the renovation or 33
construction will qualify for the exemption authorized by 34
division (B) (13) of section 5739.02 of the Revised Code. 35

(C) No port authority shall unreasonably refuse to enter 36
into an agreement described in division (B) of this section. As 37
used in this division, "unreasonably refuse" means to fail to 38
enter into such an agreement proposed to the port authority 39
within thirty days of its proposal, provided the proposed 40
agreement requires minimally acceptable investments from the 41
person proposing it. 42

(D) No board of county commissioners shall unreasonably 43
refuse to approve an agreement described in division (B) of this 44
section. As used in this division, "unreasonably refuse" means 45
to fail to approve the agreement within thirty days of the date 46
it is presented to the board of county commissioners, provided 47
the agreement requires minimally acceptable investments from the 48
person that entered into the agreement with the port authority. 49

(E) If a port authority unreasonably refuses to enter an 50
agreement, as described in division (C) of this section, or a 51
board of county commissioners unreasonably refuses to approve an 52
agreement, as described in division (D) of this section, the 53
person who proposed or entered the agreement may present it to 54
the tax credit authority created under section 122.17 of the 55
Revised Code. 56

Upon receipt of a proposed or executed agreement, the tax 57
credit authority shall verify whether it provides for minimally 58
acceptable investments. If the authority determines that the 59
proposed or executed agreement does, the tax credit authority 60
shall provide the person that presented the agreement with a 61
certificate, in a form prescribed by the tax commissioner, 62
authorizing a sales tax exemption under division (B) (13) (k) of 63
section 5739.02 of the Revised Code for construction materials 64
and services to be used in the construction or renovation of 65
improvements to real property that are the primary subject of 66
the minimally acceptable investments. 67

Sec. 5739.02. For the purpose of providing revenue with 68
which to meet the needs of the state, for the use of the general 69
revenue fund of the state, for the purpose of securing a 70
thorough and efficient system of common schools throughout the 71
state, for the purpose of affording revenues, in addition to 72
those from general property taxes, permitted under 73
constitutional limitations, and from other sources, for the 74
support of local governmental functions, and for the purpose of 75
reimbursing the state for the expense of administering this 76
chapter, an excise tax is hereby levied on each retail sale made 77
in this state. 78

(A) (1) The tax shall be collected as provided in section 79

5739.025 of the Revised Code. The rate of the tax shall be five 80
and three-fourths per cent. The tax applies and is collectible 81
when the sale is made, regardless of the time when the price is 82
paid or delivered. 83

(2) In the case of the lease or rental, with a fixed term 84
of more than thirty days or an indefinite term with a minimum 85
period of more than thirty days, of any motor vehicles designed 86
by the manufacturer to carry a load of not more than one ton, 87
watercraft, outboard motor, or aircraft, or of any tangible 88
personal property, other than motor vehicles designed by the 89
manufacturer to carry a load of more than one ton, to be used by 90
the lessee or renter primarily for business purposes, the tax 91
shall be collected by the vendor at the time the lease or rental 92
is consummated and shall be calculated by the vendor on the 93
basis of the total amount to be paid by the lessee or renter 94
under the lease agreement. If the total amount of the 95
consideration for the lease or rental includes amounts that are 96
not calculated at the time the lease or rental is executed, the 97
tax shall be calculated and collected by the vendor at the time 98
such amounts are billed to the lessee or renter. In the case of 99
an open-end lease or rental, the tax shall be calculated by the 100
vendor on the basis of the total amount to be paid during the 101
initial fixed term of the lease or rental, and for each 102
subsequent renewal period as it comes due. As used in this 103
division, "motor vehicle" has the same meaning as in section 104
4501.01 of the Revised Code, and "watercraft" includes an 105
outdrive unit attached to the watercraft. 106

A lease with a renewal clause and a termination penalty or 107
similar provision that applies if the renewal clause is not 108
exercised is presumed to be a sham transaction. In such a case, 109
the tax shall be calculated and paid on the basis of the entire 110

length of the lease period, including any renewal periods, until 111
the termination penalty or similar provision no longer applies. 112
The taxpayer shall bear the burden, by a preponderance of the 113
evidence, that the transaction or series of transactions is not 114
a sham transaction. 115

(3) Except as provided in division (A) (2) of this section, 116
in the case of a sale, the price of which consists in whole or 117
in part of the lease or rental of tangible personal property, 118
the tax shall be measured by the installments of that lease or 119
rental. 120

(4) In the case of a sale of a physical fitness facility 121
service or recreation and sports club service, the price of 122
which consists in whole or in part of a membership for the 123
receipt of the benefit of the service, the tax applicable to the 124
sale shall be measured by the installments thereof. 125

(B) The tax does not apply to the following: 126

(1) Sales to the state or any of its political 127
subdivisions, or to any other state or its political 128
subdivisions if the laws of that state exempt from taxation 129
sales made to this state and its political subdivisions 130
including either of the following: 131

(a) Sales or rentals of tangible personal property by 132
construction contractors or subcontractors to provide temporary 133
traffic control or temporary structures, including material and 134
equipment used to comply with the Ohio manual of uniform traffic 135
control devices adopted pursuant to section 4511.09 of the 136
Revised Code, whereby the state or any of its political 137
subdivisions take title to, or permanent or temporary possession 138
of, such tangible personal property for use by the state or any 139

of its political subdivisions, including for use by the general public thereof;	140 141
(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.	142 143 144 145 146 147 148
As used in divisions (B)(1)(a) and (b) of this section, "temporary structures" include temporary roads, bridges, drains, and pavement.	149 150 151
(2) Sales of food for human consumption off the premises where sold;	152 153
(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;	154 155 156
(4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications;	157 158
(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;	159 160 161 162
(6) (a) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this	163 164 165 166 167 168

section applicable to the price of motor fuel when granting a	169
refund of motor fuel tax pursuant to division (A) of section	170
5735.14 of the Revised Code and shall cause the amount deducted	171
to be paid into the general revenue fund of this state;	172
(b) Sales of motor fuel other than that described in	173
division (B) (6) (a) of this section and used for powering a	174
refrigeration unit on a vehicle other than one used primarily to	175
provide comfort to the operator or occupants of the vehicle.	176
(7) Sales of natural gas by a natural gas company or	177
municipal gas utility, of water by a water-works company, or of	178
steam by a heating company, if in each case the thing sold is	179
delivered to consumers through pipes or conduits, and all sales	180
of communications services by a telegraph company, all terms as	181
defined in section 5727.01 of the Revised Code, and sales of	182
electricity delivered through wires;	183
(8) Casual sales by a person, or auctioneer employed	184
directly by the person to conduct such sales, except as to such	185
sales of motor vehicles, watercraft or outboard motors required	186
to be titled under section 1548.06 of the Revised Code,	187
watercraft documented with the United States coast guard,	188
snowmobiles, and all-purpose vehicles as defined in section	189
4519.01 of the Revised Code;	190
(9) (a) Sales of services or tangible personal property,	191
other than motor vehicles, mobile homes, and manufactured homes,	192
by churches, organizations exempt from taxation under section	193
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit	194
organizations operated exclusively for charitable purposes as	195
defined in division (B) (12) of this section, provided that the	196
number of days on which such tangible personal property or	197
services, other than items never subject to the tax, are sold	198

does not exceed six in any calendar year, except as otherwise 199
provided in division (B) (9) (b) of this section. If the number of 200
days on which such sales are made exceeds six in any calendar 201
year, the church or organization shall be considered to be 202
engaged in business and all subsequent sales by it shall be 203
subject to the tax. In counting the number of days, all sales by 204
groups within a church or within an organization shall be 205
considered to be sales of that church or organization. 206

(b) The limitation on the number of days on which tax- 207
exempt sales may be made by a church or organization under 208
division (B) (9) (a) of this section does not apply to sales made 209
by student clubs and other groups of students of a primary or 210
secondary school, or a parent-teacher association, booster 211
group, or similar organization that raises money to support or 212
fund curricular or extracurricular activities of a primary or 213
secondary school. 214

(c) Divisions (B) (9) (a) and (b) of this section do not 215
apply to sales by a noncommercial educational radio or 216
television broadcasting station. 217

(10) Sales not within the taxing power of this state under 218
the Constitution or laws of the United States or the 219
Constitution of this state including either of the following: 220

(a) Sales or rentals of tangible personal property by 221
construction contractors or subcontractors to provide temporary 222
traffic control or temporary structures, including material and 223
equipment used to comply with the Ohio manual of uniform traffic 224
control devices adopted pursuant to section 4511.09 of the 225
Revised Code, whereby the United States takes title to, or 226
permanent or temporary possession of, such tangible personal 227
property for use by the United States including for use by the 228

general public thereof;	229
(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 United States, including the general public thereof, receives the benefit of such services.	230 231 232 233 234 235 236
As used in divisions (B) (10) (a) and (b) of this section, "temporary structures" include temporary roads, bridges, drains, and pavement.	237 238 239
(11) Except for transactions that are sales under division (B) (3) (p) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;	240 241 242 243
(12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c) (3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.	244 245 246 247 248 249 250 251 252 253 254 255 256
"Charitable purposes" means the relief of poverty; the	257

improvement of health through the alleviation of illness, 258
disease, or injury; the operation of an organization exclusively 259
for the provision of professional, laundry, printing, and 260
purchasing services to hospitals or charitable institutions; the 261
operation of a home for the aged, as defined in section 5701.13 262
of the Revised Code; the operation of a radio or television 263
broadcasting station that is licensed by the federal 264
communications commission as a noncommercial educational radio 265
or television station; the operation of a nonprofit animal 266
adoption service or a county humane society; the promotion of 267
education by an institution of learning that maintains a faculty 268
of qualified instructors, teaches regular continuous courses of 269
study, and confers a recognized diploma upon completion of a 270
specific curriculum; the operation of a parent-teacher 271
association, booster group, or similar organization primarily 272
engaged in the promotion and support of the curricular or 273
extracurricular activities of a primary or secondary school; the 274
operation of a community or area center in which presentations 275
in music, dramatics, the arts, and related fields are made in 276
order to foster public interest and education therein; the 277
production of performances in music, dramatics, and the arts; or 278
the promotion of education by an organization engaged in 279
carrying on research in, or the dissemination of, scientific and 280
technological knowledge and information primarily for the 281
public. 282

Nothing in this division shall be deemed to exempt sales 283
to any organization for use in the operation or carrying on of a 284
trade or business, or sales to a home for the aged for use in 285
the operation of independent living facilities as defined in 286
division (A) of section 5709.12 of the Revised Code. 287

(13) All of the following: 288

<u>(a) Building</u> and construction materials and services sold	289
to construction contractors for incorporation into a structure	290
or improvement to real property under a construction contract	291
with this state or a political subdivision of this state, or	292
with the United States government or any of its agencies;—	293
building—	294
<u>(b) Building</u> and construction materials and services sold	295
to construction contractors for incorporation into a structure	296
or improvement to real property that are accepted for ownership	297
by this state or any of its political subdivisions, or by the	298
United States government or any of its agencies at the time of	299
completion of the structures or improvements;— building—	300
<u>(c) Building</u> and construction materials sold to	301
construction contractors for incorporation into a horticulture	302
structure or livestock structure for a person engaged in the	303
business of horticulture or producing livestock;— building—	304
<u>(d) Building</u> materials and services sold to a construction	305
contractor for incorporation into a house of public worship or	306
religious education, or a building used exclusively for	307
charitable purposes under a construction contract with an	308
organization whose purpose is as described in division (B) (12)	309
of this section;— building—	310
<u>(e) Building</u> materials and services sold to a construction	311
contractor for incorporation into a building under a	312
construction contract with an organization exempt from taxation	313
under section 501(c) (3) of the Internal Revenue Code of 1986	314
when the building is to be used exclusively for the	315
organization's exempt purposes;— tangible—	316
<u>(f) Tangible</u> personal property sold for incorporation into	317

the construction of a sports facility under section 307.696 of 318
the Revised Code; ~~building~~ 319

(g) Building and construction materials and services sold 320
to a construction contractor for incorporation into real 321
property outside this state if such materials and services, when 322
sold to a construction contractor in the state in which the real 323
property is located for incorporation into real property in that 324
state, would be exempt from a tax on sales levied by that state; 325
~~building~~ 326

(h) Building and construction materials for incorporation 327
into a transportation facility pursuant to a public-private 328
agreement entered into under sections 5501.70 to 5501.83 of the 329
Revised Code; ~~until~~ 330

(i) Until one calendar year after the construction of a 331
convention center that qualifies for property tax exemption 332
under section 5709.084 of the Revised Code is completed, 333
building and construction materials and services sold to a 334
construction contractor for incorporation into the real property 335
comprising that convention center; ~~and building~~ 336

(j) Building and construction materials sold for 337
incorporation into a structure or improvement to real property 338
that is used primarily as, or primarily in support of, a 339
manufacturing facility or research and development facility and 340
that is to be owned by a megaproject operator upon completion 341
and located at the site of a megaproject that satisfies the 342
criteria described in division (A) (11) (a) (ii) of section 122.17 343
of the Revised Code, provided that the sale occurs during the 344
period that the megaproject operator has an agreement for such 345
megaproject with the tax credit authority under division (D) of 346
section 122.17 of the Revised Code that remains in effect and 347

has not expired or been terminated; 348

(k) Building and construction materials and services sold 349
to construction contractors for incorporation into a structure 350
or improvement to real property for which a certificate has been 351
issued under division (E) of section 4582.72 of the Revised 352
Code. 353

This division does not apply to building and construction 354
materials and services sold to construction contractors for 355
incorporation into a structure or improvement to real property 356
under a construction contract with a port authority if the 357
contract is subject to section 4582.72 of the Revised Code but 358
approval from the appropriate board of county commissioners, as 359
required by that section, has not been obtained. 360

(14) Sales of ships or vessels or rail rolling stock used 361
or to be used principally in interstate or foreign commerce, and 362
repairs, alterations, fuel, and lubricants for such ships or 363
vessels or rail rolling stock; 364

(15) Sales to persons primarily engaged in any of the 365
activities mentioned in division (B) (42) (a), (g), or (h) of this 366
section, to persons engaged in making retail sales, or to 367
persons who purchase for sale from a manufacturer tangible 368
personal property that was produced by the manufacturer in 369
accordance with specific designs provided by the purchaser, of 370
packages, including material, labels, and parts for packages, 371
and of machinery, equipment, and material for use primarily in 372
packaging tangible personal property produced for sale, 373
including any machinery, equipment, and supplies used to make 374
labels or packages, to prepare packages or products for 375
labeling, or to label packages or products, by or on the order 376
of the person doing the packaging, or sold at retail. "Packages" 377

includes bags, baskets, cartons, crates, boxes, cans, bottles, 378
bindings, wrappings, and other similar devices and containers, 379
but does not include motor vehicles or bulk tanks, trailers, or 380
similar devices attached to motor vehicles. "Packaging" means 381
placing in a package. Division (B) (15) of this section does not 382
apply to persons engaged in highway transportation for hire. 383

(16) Sales of food to persons using supplemental nutrition 384
assistance program benefits to purchase the food. As used in 385
this division, "food" has the same meaning as in 7 U.S.C. 2012 386
and federal regulations adopted pursuant to the Food and 387
Nutrition Act of 2008. 388

(17) Sales to persons engaged in farming, agriculture, 389
horticulture, or floriculture, of tangible personal property for 390
use or consumption primarily in the production by farming, 391
agriculture, horticulture, or floriculture of other tangible 392
personal property for use or consumption primarily in the 393
production of tangible personal property for sale by farming, 394
agriculture, horticulture, or floriculture; or material and 395
parts for incorporation into any such tangible personal property 396
for use or consumption in production; and of tangible personal 397
property for such use or consumption in the conditioning or 398
holding of products produced by and for such use, consumption, 399
or sale by persons engaged in farming, agriculture, 400
horticulture, or floriculture, except where such property is 401
incorporated into real property; 402

(18) Sales of drugs for a human being that may be 403
dispensed only pursuant to a prescription; insulin as recognized 404
in the official United States pharmacopoeia; urine and blood 405
testing materials when used by diabetics or persons with 406
hypoglycemia to test for glucose or acetone; hypodermic syringes 407

and needles when used by diabetics for insulin injections;	408
epoetin alfa when purchased for use in the treatment of persons	409
with medical disease; hospital beds when purchased by hospitals,	410
nursing homes, or other medical facilities; and medical oxygen	411
and medical oxygen-dispensing equipment when purchased by	412
hospitals, nursing homes, or other medical facilities;	413
(19) Sales of prosthetic devices, durable medical	414
equipment for home use, or mobility enhancing equipment, when	415
made pursuant to a prescription and when such devices or	416
equipment are for use by a human being.	417
(20) Sales of emergency and fire protection vehicles and	418
equipment to nonprofit organizations for use solely in providing	419
fire protection and emergency services, including trauma care	420
and emergency medical services, for political subdivisions of	421
the state;	422
(21) Sales of tangible personal property manufactured in	423
this state, if sold by the manufacturer in this state to a	424
retailer for use in the retail business of the retailer outside	425
of this state and if possession is taken from the manufacturer	426
by the purchaser within this state for the sole purpose of	427
immediately removing the same from this state in a vehicle owned	428
by the purchaser;	429
(22) Sales of services provided by the state or any of its	430
political subdivisions, agencies, instrumentalities,	431
institutions, or authorities, or by governmental entities of the	432
state or any of its political subdivisions, agencies,	433
instrumentalities, institutions, or authorities;	434
(23) Sales of motor vehicles to nonresidents of this state	435
under the circumstances described in division (B) of section	436

5739.029 of the Revised Code;	437
(24) Sales to persons engaged in the preparation of eggs	438
for sale of tangible personal property used or consumed directly	439
in such preparation, including such tangible personal property	440
used for cleaning, sanitizing, preserving, grading, sorting, and	441
classifying by size; packages, including material and parts for	442
packages, and machinery, equipment, and material for use in	443
packaging eggs for sale; and handling and transportation	444
equipment and parts therefor, except motor vehicles licensed to	445
operate on public highways, used in intraplant or interplant	446
transfers or shipment of eggs in the process of preparation for	447
sale, when the plant or plants within or between which such	448
transfers or shipments occur are operated by the same person.	449
"Packages" includes containers, cases, baskets, flats, fillers,	450
filler flats, cartons, closure materials, labels, and labeling	451
materials, and "packaging" means placing therein.	452
(25) (a) Sales of water to a consumer for residential use;	453
(b) Sales of water by a nonprofit corporation engaged	454
exclusively in the treatment, distribution, and sale of water to	455
consumers, if such water is delivered to consumers through pipes	456
or tubing.	457
(26) Fees charged for inspection or reinspection of motor	458
vehicles under section 3704.14 of the Revised Code;	459
(27) Sales to persons licensed to conduct a food service	460
operation pursuant to section 3717.43 of the Revised Code, of	461
tangible personal property primarily used directly for the	462
following:	463
(a) To prepare food for human consumption for sale;	464
(b) To preserve food that has been or will be prepared for	465

human consumption for sale by the food service operator, not	466
including tangible personal property used to display food for	467
selection by the consumer;	468
(c) To clean tangible personal property used to prepare or	469
serve food for human consumption for sale.	470
(28) Sales of animals by nonprofit animal adoption	471
services or county humane societies;	472
(29) Sales of services to a corporation described in	473
division (A) of section 5709.72 of the Revised Code, and sales	474
of tangible personal property that qualifies for exemption from	475
taxation under section 5709.72 of the Revised Code;	476
(30) Sales and installation of agricultural land tile, as	477
defined in division (B) (5) (a) of section 5739.01 of the Revised	478
Code;	479
(31) Sales and erection or installation of portable grain	480
bins, as defined in division (B) (5) (b) of section 5739.01 of the	481
Revised Code;	482
(32) The sale, lease, repair, and maintenance of, parts	483
for, or items attached to or incorporated in, motor vehicles	484
that are primarily used for transporting tangible personal	485
property belonging to others by a person engaged in highway	486
transportation for hire, except for packages and packaging used	487
for the transportation of tangible personal property;	488
(33) Sales to the state headquarters of any veterans'	489
organization in this state that is either incorporated and	490
issued a charter by the congress of the United States or is	491
recognized by the United States veterans administration, for use	492
by the headquarters;	493

(34) Sales to a telecommunications service vendor, mobile 494
telecommunications service vendor, or satellite broadcasting 495
service vendor of tangible personal property and services used 496
directly and primarily in transmitting, receiving, switching, or 497
recording any interactive, one- or two-way electromagnetic 498
communications, including voice, image, data, and information, 499
through the use of any medium, including, but not limited to, 500
poles, wires, cables, switching equipment, computers, and record 501
storage devices and media, and component parts for the tangible 502
personal property. The exemption provided in this division shall 503
be in lieu of all other exemptions under division (B) (42) (a) or 504
(n) of this section to which the vendor may otherwise be 505
entitled, based upon the use of the thing purchased in providing 506
the telecommunications, mobile telecommunications, or satellite 507
broadcasting service. 508

(35) Sales of strollers meant for transporting children 509
from infancy to about thirty-six months of age that meet the 510
United States consumer product safety commission safety standard 511
for carriages and strollers under 16 C.F.R. 1227.2. 512

(36) Sales to a person engaged in the business of 513
horticulture or producing livestock of materials to be 514
incorporated into a horticulture structure or livestock 515
structure; 516

(37) Sales of personal computers, computer monitors, 517
computer keyboards, modems, and other peripheral computer 518
equipment to an individual who is licensed or certified to teach 519
in an elementary or a secondary school in this state for use by 520
that individual in preparation for teaching elementary or 521
secondary school students; 522

(38) Sales of tangible personal property that is not 523

required to be registered or licensed under the laws of this 524
state to a citizen of a foreign nation that is not a citizen of 525
the United States, provided the property is delivered to a 526
person in this state that is not a related member of the 527
purchaser, is physically present in this state for the sole 528
purpose of temporary storage and package consolidation, and is 529
subsequently delivered to the purchaser at a delivery address in 530
a foreign nation. As used in division (B)(38) of this section, 531
"related member" has the same meaning as in section 5733.042 of 532
the Revised Code, and "temporary storage" means the storage of 533
tangible personal property for a period of not more than sixty 534
days. 535

(39) Sales of used manufactured homes and used mobile 536
homes, as defined in section 5739.0210 of the Revised Code, made 537
on or after January 1, 2000; 538

(40) Sales of tangible personal property and services to a 539
provider of electricity used or consumed directly and primarily 540
in generating, transmitting, or distributing electricity for use 541
by others, including property that is or is to be incorporated 542
into and will become a part of the consumer's production, 543
transmission, or distribution system and that retains its 544
classification as tangible personal property after 545
incorporation; fuel or power used in the production, 546
transmission, or distribution of electricity; energy conversion 547
equipment as defined in section 5727.01 of the Revised Code; and 548
tangible personal property and services used in the repair and 549
maintenance of the production, transmission, or distribution 550
system, including only those motor vehicles as are specially 551
designed and equipped for such use. The exemption provided in 552
this division shall be in lieu of all other exemptions in 553
division (B)(42)(a) or (n) of this section to which a provider 554

of electricity may otherwise be entitled based on the use of the 555
tangible personal property or service purchased in generating, 556
transmitting, or distributing electricity. 557

(41) Sales to a person providing services under division 558
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 559
personal property and services used directly and primarily in 560
providing taxable services under that section. 561

(42) Sales where the purpose of the purchaser is to do any 562
of the following: 563

(a) To incorporate the thing transferred as a material or 564
a part into tangible personal property to be produced for sale 565
by manufacturing, assembling, processing, or refining; or to use 566
or consume the thing transferred directly in producing tangible 567
personal property for sale by mining, including, without 568
limitation, the extraction from the earth of all substances that 569
are classed geologically as minerals, or directly in the 570
rendition of a public utility service, except that the sales tax 571
levied by this section shall be collected upon all meals, 572
drinks, and food for human consumption sold when transporting 573
persons. This paragraph does not exempt from "retail sale" or 574
"sales at retail" the sale of tangible personal property that is 575
to be incorporated into a structure or improvement to real 576
property. 577

(b) To hold the thing transferred as security for the 578
performance of an obligation of the vendor; 579

(c) To resell, hold, use, or consume the thing transferred 580
as evidence of a contract of insurance; 581

(d) To use or consume the thing directly in commercial 582
fishing; 583

(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;	584 585 586 587
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	588 589 590 591 592
(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;	593 594 595
(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;	596 597 598 599 600 601
(i) To use the thing transferred as qualified research and development equipment;	602 603
(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	604 605 606 607 608 609 610 611 612

highways. As used in this division, "affiliated group" has the 613
same meaning as in division (B) (3) (e) of section 5739.01 of the 614
Revised Code and "direct marketing" means the method of selling 615
where consumers order tangible personal property by United 616
States mail, delivery service, or telecommunication and the 617
vendor delivers or ships the tangible personal property sold to 618
the consumer from a warehouse, catalogue distribution center, or 619
similar fulfillment facility by means of the United States mail, 620
delivery service, or common carrier. 621

(k) To use or consume the thing transferred to fulfill a 622
contractual obligation incurred by a warrantor pursuant to a 623
warranty provided as a part of the price of the tangible 624
personal property sold or by a vendor of a warranty, maintenance 625
or service contract, or similar agreement the provision of which 626
is defined as a sale under division (B) (7) of section 5739.01 of 627
the Revised Code; 628

(l) To use or consume the thing transferred in the 629
production of a newspaper for distribution to the public; 630

(m) To use tangible personal property to perform a service 631
listed in division (B) (3) of section 5739.01 of the Revised 632
Code, if the property is or is to be permanently transferred to 633
the consumer of the service as an integral part of the 634
performance of the service; 635

(n) To use or consume the thing transferred primarily in 636
producing tangible personal property for sale by farming, 637
agriculture, horticulture, or floriculture. Persons engaged in 638
rendering farming, agriculture, horticulture, or floriculture 639
services for others are deemed engaged primarily in farming, 640
agriculture, horticulture, or floriculture. This paragraph does 641
not exempt from "retail sale" or "sales at retail" the sale of 642

tangible personal property that is to be incorporated into a 643
structure or improvement to real property. 644

~~(q)~~ (o) To use or consume the thing transferred directly in 645
production of crude oil and natural gas for sale. Persons 646
engaged in rendering production services for others are deemed 647
engaged in production. 648

As used in division ~~(B) (42) (q)~~ (B) (42) (o) of this section, 649
"production" means operations and tangible personal property 650
directly used to expose and evaluate an underground reservoir 651
that may contain hydrocarbon resources, prepare the wellbore for 652
production, and lift and control all substances yielded by the 653
reservoir to the surface of the earth. 654

(i) For the purposes of division ~~(B) (42) (q)~~ (B) (42) (o) of 655
this section, the "thing transferred" includes, but is not 656
limited to, any of the following: 657

(I) Services provided in the construction of permanent 658
access roads, services provided in the construction of the well 659
site, and services provided in the construction of temporary 660
impoundments; 661

(II) Equipment and rigging used for the specific purpose 662
of creating with integrity a wellbore pathway to underground 663
reservoirs; 664

(III) Drilling and workover services used to work within a 665
subsurface wellbore, and tangible personal property directly 666
used in providing such services; 667

(IV) Casing, tubulars, and float and centralizing 668
equipment; 669

(V) Trailers to which production equipment is attached; 670

(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	671 672 673
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	674 675 676
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	677 678 679 680
(IX) Pressure pumping equipment;	681
(X) Artificial lift systems equipment;	682
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	683 684 685
(XII) Tangible personal property directly used to control production equipment.	686 687
(ii) For the purposes of division (B) (42) (g) <u>(B) (42) (o)</u> of this section, the "thing transferred" does not include any of the following:	688 689 690
(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;	691 692 693
(II) Tangible personal property used primarily in storing, holding, or delivering solutions or chemicals used in well stimulation as defined in section 1509.01 of the Revised Code;	694 695 696
(III) Tangible personal property used primarily in	697

preparing, installing, or reclaiming foundations for drilling or	698
pumping equipment or well stimulation material tanks;	699
(IV) Tangible personal property used primarily in	700
transporting, delivering, or removing equipment to or from the	701
well site or storing such equipment before its use at the well	702
site;	703
(V) Tangible personal property used primarily in gathering	704
operations occurring off the well site, including gathering	705
pipelines transporting hydrocarbon gas or liquids away from a	706
crude oil or natural gas production facility;	707
(VI) Tangible personal property that is to be incorporated	708
into a structure or improvement to real property;	709
(VII) Well site fencing, lighting, or security systems;	710
(VIII) Communication devices or services;	711
(IX) Office supplies;	712
(X) Trailers used as offices or lodging;	713
(XI) Motor vehicles of any kind;	714
(XII) Tangible personal property used primarily for the	715
storage of drilling byproducts and fuel not used for production;	716
(XIII) Tangible personal property used primarily as a	717
safety device;	718
(XIV) Data collection or monitoring devices;	719
(XV) Access ladders, stairs, or platforms attached to	720
storage tanks.	721
The enumeration of tangible personal property in division	722
(B) (42) (g) (ii) <u>(B) (42) (o) (ii)</u> of this section is not intended to	723

be exhaustive, and any tangible personal property not so 724
enumerated shall not necessarily be construed to be a "thing 725
transferred" for the purposes of division ~~(B) (42) (e)~~ (B) (42) (o) 726
of this section. 727

The commissioner shall adopt and promulgate rules under 728
sections 119.01 to 119.13 of the Revised Code that the 729
commissioner deems necessary to administer division ~~(B) (42) (e)~~ 730
(B) (42) (o) of this section. 731

As used in division (B) (42) of this section, "thing" 732
includes all transactions included in divisions (B) (3) (a), (b), 733
and (e) of section 5739.01 of the Revised Code. 734

(43) Sales conducted through a coin operated device that 735
activates vacuum equipment or equipment that dispenses water, 736
whether or not in combination with soap or other cleaning agents 737
or wax, to the consumer for the consumer's use on the premises 738
in washing, cleaning, or waxing a motor vehicle, provided no 739
other personal property or personal service is provided as part 740
of the transaction. 741

(44) Sales of replacement and modification parts for 742
engines, airframes, instruments, and interiors in, and paint 743
for, aircraft used primarily in a fractional aircraft ownership 744
program, and sales of services for the repair, modification, and 745
maintenance of such aircraft, and machinery, equipment, and 746
supplies primarily used to provide those services. 747

(45) The fee imposed by section 3743.22 of the Revised 748
Code, if it is separately stated on the invoice, bill of sale, 749
or similar document given by the vendor to the consumer for a 750
retail sale made in this state. 751

(46) Sales by a telecommunications service vendor of 900 752

service to a subscriber. This division does not apply to 753
information services. 754

(47) Sales of value-added non-voice data service. This 755
division does not apply to any similar service that is not 756
otherwise a telecommunications service. 757

(48) Sales of feminine hygiene products. 758

(49) Sales of materials, parts, equipment, or engines used 759
in the repair or maintenance of aircraft or avionics systems of 760
such aircraft, and sales of repair, remodeling, replacement, or 761
maintenance services in this state performed on aircraft or on 762
an aircraft's avionics, engine, or component materials or parts. 763
As used in division (B) (49) of this section, "aircraft" means 764
aircraft of more than six thousand pounds maximum certified 765
takeoff weight or used exclusively in general aviation. 766

(50) Sales of full flight simulators that are used for 767
pilot or flight-crew training, sales of repair or replacement 768
parts or components, and sales of repair or maintenance services 769
for such full flight simulators. "Full flight simulator" means a 770
replica of a specific type, or make, model, and series of 771
aircraft cockpit. It includes the assemblage of equipment and 772
computer programs necessary to represent aircraft operations in 773
ground and flight conditions, a visual system providing an out- 774
of-the-cockpit view, and a system that provides cues at least 775
equivalent to those of a three-degree-of-freedom motion system, 776
and has the full range of capabilities of the systems installed 777
in the device as described in appendices A and B of part 60 of 778
chapter 1 of title 14 of the Code of Federal Regulations. 779

(51) Any transfer or lease of tangible personal property 780
between the state and JobsOhio in accordance with section 781

4313.02 of the Revised Code.	782
(52) (a) Sales to a qualifying corporation.	783
(b) As used in division (B) (52) of this section:	784
(i) "Qualifying corporation" means a nonprofit corporation	785
organized in this state that leases from an eligible county	786
land, buildings, structures, fixtures, and improvements to the	787
land that are part of or used in a public recreational facility	788
used by a major league professional athletic team or a class A	789
to class AAA minor league affiliate of a major league	790
professional athletic team for a significant portion of the	791
team's home schedule, provided the following apply:	792
(I) The facility is leased from the eligible county	793
pursuant to a lease that requires substantially all of the	794
revenue from the operation of the business or activity conducted	795
by the nonprofit corporation at the facility in excess of	796
operating costs, capital expenditures, and reserves to be paid	797
to the eligible county at least once per calendar year.	798
(II) Upon dissolution and liquidation of the nonprofit	799
corporation, all of its net assets are distributable to the	800
board of commissioners of the eligible county from which the	801
corporation leases the facility.	802
(ii) "Eligible county" has the same meaning as in section	803
307.695 of the Revised Code.	804
(53) Sales to or by a cable service provider, video	805
service provider, or radio or television broadcast station	806
regulated by the federal government of cable service or	807
programming, video service or programming, audio service or	808
programming, or electronically transferred digital audiovisual	809
or audio work. As used in division (B) (53) of this section,	810

"cable service" and "cable service provider" have the same 811
meanings as in section 1332.01 of the Revised Code, and "video 812
service," "video service provider," and "video programming" have 813
the same meanings as in section 1332.21 of the Revised Code. 814

(54) Sales of a digital audio work electronically 815
transferred for delivery through use of a machine, such as a 816
juke box, that does all of the following: 817

(a) Accepts direct payments to operate; 818

(b) Automatically plays a selected digital audio work for 819
a single play upon receipt of a payment described in division 820
(B) (54) (a) of this section; 821

(c) Operates exclusively for the purpose of playing 822
digital audio works in a commercial establishment. 823

(55) (a) Sales of the following occurring on the first 824
Friday of August and the following Saturday and Sunday of any 825
year, except in 2024 or any subsequent year in which a sales tax 826
holiday is held pursuant to section 5739.41 of the Revised Code: 827

(i) An item of clothing, the price of which is seventy- 828
five dollars or less; 829

(ii) An item of school supplies, the price of which is 830
twenty dollars or less; 831

(iii) An item of school instructional material, the price 832
of which is twenty dollars or less. 833

(b) As used in division (B) (55) of this section: 834

(i) "Clothing" means all human wearing apparel suitable 835
for general use. "Clothing" includes, but is not limited to, 836
aprons, household and shop; athletic supporters; baby receiving 837

blankets; bathing suits and caps; beach capes and coats; belts	838
and suspenders; boots; coats and jackets; costumes; diapers,	839
children and adult, including disposable diapers; earmuffs;	840
footlets; formal wear; garters and garter belts; girdles; gloves	841
and mittens for general use; hats and caps; hosiery; insoles for	842
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	843
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	844
sneakers; socks and stockings; steel-toed shoes; underwear;	845
uniforms, athletic and nonathletic; and wedding apparel.	846
"Clothing" does not include items purchased for use in a trade	847
or business; clothing accessories or equipment; protective	848
equipment; sports or recreational equipment; belt buckles sold	849
separately; costume masks sold separately; patches and emblems	850
sold separately; sewing equipment and supplies including, but	851
not limited to, knitting needles, patterns, pins, scissors,	852
sewing machines, sewing needles, tape measures, and thimbles;	853
and sewing materials that become part of "clothing" including,	854
but not limited to, buttons, fabric, lace, thread, yarn, and	855
zippers.	856
(ii) "School supplies" means items commonly used by a	857
student in a course of study. "School supplies" includes only	858
the following items: binders; book bags; calculators; cellophane	859
tape; blackboard chalk; compasses; composition books; crayons;	860
erasers; folders, expandable, pocket, plastic, and manila; glue,	861
paste, and paste sticks; highlighters; index cards; index card	862
boxes; legal pads; lunch boxes; markers; notebooks; paper,	863
loose-leaf ruled notebook paper, copy paper, graph paper,	864
tracing paper, manila paper, colored paper, poster board, and	865
construction paper; pencil boxes and other school supply boxes;	866
pencil sharpeners; pencils; pens; protractors; rulers; scissors;	867
and writing tablets. "School supplies" does not include any item	868

purchased for use in a trade or business. 869

(iii) "School instructional material" means written 870
material commonly used by a student in a course of study as a 871
reference and to learn the subject being taught. "School 872
instructional material" includes only the following items: 873
reference books, reference maps and globes, textbooks, and 874
workbooks. "School instructional material" does not include any 875
material purchased for use in a trade or business. 876

(56) (a) Sales of adult diapers or incontinence underpads 877
sold pursuant to a prescription, for the benefit of a medicaid 878
recipient with a diagnosis of incontinence, and by a medicaid 879
provider that maintains a valid provider agreement under section 880
5164.30 of the Revised Code with the department of medicaid, 881
provided that the medicaid program covers diapers or 882
incontinence underpads as an incontinence garment. 883

(b) As used in division (B) (56) (a) of this section, 884
"incontinence underpad" means an absorbent product, not worn on 885
the body, designed to protect furniture or other tangible 886
personal property from soiling or damage due to human 887
incontinence. 888

(57) Sales of investment metal bullion and investment 889
coins. "Investment metal bullion" means any bullion described in 890
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 891
whether that bullion is in the physical possession of a trustee. 892
"Investment coin" means any coin composed primarily of gold, 893
silver, platinum, or palladium. 894

(58) Sales of tangible personal property used primarily 895
for any of the following purposes by a megaproject operator at 896
the site of a megaproject that satisfies the criteria described 897

in division (A) (11) (a) (ii) of section 122.17 of the Revised Code, provided that the sale occurs during the period that the megaproject operator has an agreement for such megaproject with the tax credit authority under division (D) of section 122.17 of the Revised Code that remains in effect and has not expired or been terminated:

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

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

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

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

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

(60) Sales of children's diapers.

(61) Sales of therapeutic or preventative creams and wipes marketed primarily for use on the skin of children.

(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.

(63) Sales of cribs intended to provide sleeping

accommodations for children that comply with the United States 926
consumer product safety commission's safety standard for full- 927
size baby cribs under 16 C.F.R. 1219 or the commission's safety 928
standard for non-full-size baby cribs under 16 C.F.R. 1220. 929

(64) Sales of eligible tangible personal property 930
occurring during the period of a sales tax holiday held pursuant 931
to section 5739.41 of the Revised Code. 932

(C) For the purpose of the proper administration of this 933
chapter, and to prevent the evasion of the tax, it is presumed 934
that all sales made in this state are subject to the tax until 935
the contrary is established. 936

(D) The tax collected by the vendor from the consumer 937
under this chapter is not part of the price, but is a tax 938
collection for the benefit of the state, and of counties levying 939
an additional sales tax pursuant to section 5739.021 or 5739.026 940
of the Revised Code and of transit authorities levying an 941
additional sales tax pursuant to section 5739.023 of the Revised 942
Code. Except for the discount authorized under section 5739.12 943
of the Revised Code and the effects of any rounding pursuant to 944
section 5703.055 of the Revised Code, no person other than the 945
state or such a county or transit authority shall derive any 946
benefit from the collection or payment of the tax levied by this 947
section or section 5739.021, 5739.023, or 5739.026 of the 948
Revised Code. 949

Sec. 5739.03. (A) Except as provided in section 5739.05 or 950
section 5739.051 of the Revised Code, the tax imposed by or 951
pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of 952
the Revised Code shall be paid by the consumer to the vendor, 953
and each vendor shall collect from the consumer, as a trustee 954
for the state of Ohio, the full and exact amount of the tax 955

payable on each taxable sale, in the manner and at the times 956
provided as follows: 957

(1) If the price is, at or prior to the provision of the 958
service or the delivery of possession of the thing sold to the 959
consumer, paid in currency passed from hand to hand by the 960
consumer or the consumer's agent to the vendor or the vendor's 961
agent, the vendor or the vendor's agent shall collect the tax 962
with and at the same time as the price; 963

(2) If the price is otherwise paid or to be paid, the 964
vendor or the vendor's agent shall, at or prior to the provision 965
of the service or the delivery of possession of the thing sold 966
to the consumer, charge the tax imposed by or pursuant to 967
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 968
Code to the account of the consumer, which amount shall be 969
collected by the vendor from the consumer in addition to the 970
price. Such sale shall be reported on and the amount of the tax 971
applicable thereto shall be remitted with the return for the 972
period in which the sale is made, and the amount of the tax 973
shall become a legal charge in favor of the vendor and against 974
the consumer. 975

(B) (1) (a) If any sale is claimed to be exempt under 976
division (E) of section 5739.01 of the Revised Code or under 977
section 5739.02 of the Revised Code, with the exception of 978
divisions (B) (1) to (11), (28), (48), (55), (59), or (62) of 979
section 5739.02 of the Revised Code, the consumer must provide 980
to the vendor, and the vendor must obtain from the consumer, a 981
certificate specifying the reason that the sale is not legally 982
subject to the tax. The certificate shall be in such form, and 983
shall be provided either in a hard copy form or electronic form, 984
as the tax commissioner prescribes. 985

(b) A vendor that obtains a fully completed exemption certificate from a consumer is relieved of liability for collecting and remitting tax on any sale covered by that certificate. If it is determined the exemption was improperly claimed, the consumer shall be liable for any tax due on that sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or Chapter 5741. of the Revised Code. Relief under this division from liability does not apply to any of the following:	986 987 988 989 990 991 992 993
(i) A vendor that fraudulently fails to collect tax;	994
(ii) A vendor that solicits consumers to participate in the unlawful claim of an exemption;	995 996
(iii) A vendor that accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service, when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in this state, and this state has posted to its web site an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available in this state;	997 998 999 1000 1001 1002 1003 1004 1005
(iv) A vendor that accepts an exemption certificate from a consumer who claims a multiple points of use exemption under division (D) of section 5739.033 of the Revised Code, if the item purchased is tangible personal property, other than prewritten computer software.	1006 1007 1008 1009 1010
(2) The vendor shall maintain records, including exemption certificates, of all sales on which a consumer has claimed an exemption, and provide them to the tax commissioner on request.	1011 1012 1013
(3) The tax commissioner may establish an identification	1014

system whereby the commissioner issues an identification number 1015
to a consumer that is exempt from payment of the tax. The 1016
consumer must present the number to the vendor, if any sale is 1017
claimed to be exempt as provided in this section. 1018

(4) If no certificate is provided or obtained within 1019
ninety days after the date on which such sale is consummated, it 1020
shall be presumed that the tax applies. Failure to have so 1021
provided or obtained a certificate shall not preclude a vendor, 1022
within one hundred twenty days after the tax commissioner gives 1023
written notice of intent to levy an assessment, from either 1024
establishing that the sale is not subject to the tax, or 1025
obtaining, in good faith, a fully completed exemption 1026
certificate. 1027

(5) Certificates need not be obtained nor provided where 1028
the identity of the consumer is such that the transaction is 1029
never subject to the tax imposed or where the item of tangible 1030
personal property sold or the service provided is never subject 1031
to the tax imposed, regardless of use, or when the sale is in 1032
interstate commerce. 1033

(6) If a transaction is claimed to be exempt under 1034
division (B) (13) of section 5739.02 of the Revised Code, the 1035
contractor shall obtain certification of the claimed exemption 1036
from the contractee. This certification shall be in addition to 1037
an exemption certificate provided by the contractor to the 1038
vendor. A contractee that provides a certification under this 1039
division shall be deemed to be the consumer of all items 1040
purchased by the contractor under the claim of exemption, if it 1041
is subsequently determined that the exemption is not properly 1042
claimed. The certification shall be in such form as the tax 1043
commissioner prescribes. 1044

(7) If a transaction is claimed to be exempt under 1045
division ~~(B) (13)~~ (B) (13) (f) of section 5739.02 of the Revised 1046
Code, the person that leases a sports facility, as defined in 1047
section 307.696 of the Revised Code, wholly owned by a county 1048
may provide and sign, on behalf of the county, an exemption 1049
certificate required under this section for that exemption. 1050

(C) As used in this division, "contractee" means a person 1051
who seeks to enter or enters into a contract or agreement with a 1052
contractor or vendor for the construction of real property or 1053
for the sale and installation onto real property of tangible 1054
personal property. 1055

Any contractor or vendor may request from any contractee a 1056
certification of what portion of the property to be transferred 1057
under such contract or agreement is to be incorporated into the 1058
realty and what portion will retain its status as tangible 1059
personal property after installation is completed. The 1060
contractor or vendor shall request the certification by 1061
certified mail delivered to the contractee, return receipt 1062
requested. Upon receipt of such request and prior to entering 1063
into the contract or agreement, the contractee shall provide to 1064
the contractor or vendor a certification sufficiently detailed 1065
to enable the contractor or vendor to ascertain the resulting 1066
classification of all materials purchased or fabricated by the 1067
contractor or vendor and transferred to the contractee. This 1068
requirement applies to a contractee regardless of whether the 1069
contractee holds a direct payment permit under section 5739.031 1070
of the Revised Code or provides to the contractor or vendor an 1071
exemption certificate as provided under this section. 1072

For the purposes of the taxes levied by this chapter and 1073
Chapter 5741. of the Revised Code, the contractor or vendor may 1074

in good faith rely on the contractee's certification. 1075
Notwithstanding division (B) of section 5739.01 of the Revised 1076
Code, if the tax commissioner determines that certain property 1077
certified by the contractee as tangible personal property 1078
pursuant to this division is, in fact, real property, the 1079
contractee shall be considered to be the consumer of all 1080
materials so incorporated into that real property and shall be 1081
liable for the applicable tax, and the contractor or vendor 1082
shall be excused from any liability on those materials. 1083

If a contractee fails to provide such certification upon 1084
the request of the contractor or vendor, the contractor or 1085
vendor shall comply with the provisions of this chapter and 1086
Chapter 5741. of the Revised Code without the certification. If 1087
the tax commissioner determines that such compliance has been 1088
performed in good faith and that certain property treated as 1089
tangible personal property by the contractor or vendor is, in 1090
fact, real property, the contractee shall be considered to be 1091
the consumer of all materials so incorporated into that real 1092
property and shall be liable for the applicable tax, and the 1093
construction contractor or vendor shall be excused from any 1094
liability on those materials. 1095

This division does not apply to any contract or agreement 1096
where the tax commissioner determines as a fact that a 1097
certification under this division was made solely on the 1098
decision or advice of the contractor or vendor. 1099

(D) Notwithstanding division (B) of section 5739.01 of the 1100
Revised Code, whenever the total rate of tax imposed under this 1101
chapter is increased after the date after a construction 1102
contract is entered into, the contractee shall reimburse the 1103
construction contractor for any additional tax paid on tangible 1104

property consumed or services received pursuant to the contract. 1105

(E) A vendor who files a petition for reassessment 1106
contesting the assessment of tax on sales for which the vendor 1107
obtained no valid exemption certificates and for which the 1108
vendor failed to establish that the sales were properly not 1109
subject to the tax during the one-hundred-twenty-day period 1110
allowed under division (B) of this section, may present to the 1111
tax commissioner additional evidence to prove that the sales 1112
were properly subject to a claim of exception or exemption. The 1113
vendor shall file such evidence within ninety days of the 1114
receipt by the vendor of the notice of assessment, except that, 1115
upon application and for reasonable cause, the period for 1116
submitting such evidence shall be extended thirty days. 1117

The commissioner shall consider such additional evidence 1118
in reaching the final determination on the assessment and 1119
petition for reassessment. 1120

(F) Whenever a vendor refunds the price, minus any 1121
separately stated delivery charge, of an item of tangible 1122
personal property on which the tax imposed under this chapter 1123
has been paid, the vendor shall also refund the amount of tax 1124
paid, minus the amount of tax attributable to the delivery 1125
charge. 1126

Section 2. That existing sections 4582.72, 5739.02, and 1127
5739.03 of the Revised Code are hereby repealed. 1128