

As Introduced

135th General Assembly

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H. B. No. 186

Representatives Brewer, Brennan

**Cosponsors: Representatives Thomas, C., Rogers, Grim, Baker, Dell'Aquila,
Forhan, McNally**

A BILL

To amend sections 5739.01, 5739.02, 5739.03, and 1
5739.17 of the Revised Code to exempt from sales 2
and use tax sales of firearm safety devices. 3

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

Section 1. That sections 5739.01, 5739.02, 5739.03, and 4
5739.17 of the Revised Code be amended to read as follows: 5

Sec. 5739.01. As used in this chapter: 6

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

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

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

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

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

(3) All transactions by which: 22

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) All transactions by which printed, imprinted,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Discounts, including cash, term, or coupons that are 337
not reimbursed by a third party that are allowed by a vendor and 338
taken by a consumer on a sale; 339

(ii) Interest, financing, and carrying charges from credit 340
extended on the sale of tangible personal property or services, 341
if the amount is separately stated on the invoice, bill of sale, 342
or similar document given to the purchaser; 343

(iii) Any taxes legally imposed directly on the consumer 344
that are separately stated on the invoice, bill of sale, or 345
similar document given to the consumer. For the purpose of this 346
division, the tax imposed under Chapter 5751. of the Revised 347
Code is not a tax directly on the consumer, even if the tax or a 348
portion thereof is separately stated. 349

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 350
this section, any discount allowed by an automobile manufacturer 351
to its employee, or to the employee of a supplier, on the 352
purchase of a new motor vehicle from a new motor vehicle dealer 353
in this state. 354

(v) The dollar value of a gift card that is not sold by a 355
vendor or purchased by a consumer and that is redeemed by the 356
consumer in purchasing tangible personal property or services if 357
the vendor is not reimbursed and does not receive compensation 358
from a third party to cover all or part of the gift card value. 359
For the purposes of this division, a gift card is not sold by a 360
vendor or purchased by a consumer if it is distributed pursuant 361
to an awards, loyalty, or promotional program. Past and present 362
purchases of tangible personal property or services by the 363
consumer shall not be treated as consideration exchanged for a 364
gift card. 365

(2) In the case of a sale of any new motor vehicle by a new motor vehicle dealer, as defined in section 4517.01 of the Revised Code, in which another motor vehicle is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.

(3) In the case of a sale of any watercraft or outboard motor by a watercraft dealer licensed in accordance with section 1547.543 of the Revised Code, in which another watercraft, watercraft and trailer, or outboard motor is accepted by the dealer as part of the consideration received, "price" has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the watercraft, watercraft and trailer, or outboard motor received in trade. As used in this division, "watercraft" includes an outdrive unit attached to the watercraft.

(4) In the case of transactions for health care services under division (B)(11) of this section, "price" means the amount of managed care premiums received each month by a medicaid health insuring corporation.

(I) "Receipts" means the total amount of the prices of the sales of vendors, provided that the dollar value of gift cards distributed pursuant to an awards, loyalty, or promotional program, and cash discounts allowed and taken on sales at the time they are consummated are not included, minus any amount deducted as a bad debt pursuant to section 5739.121 of the Revised Code. "Receipts" does not include the sale price of property returned or services rejected by consumers when the full sale price and tax are refunded either in cash or by

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| credit. | 396 |
| (J) "Place of business" means any location at which a person engages in business. | 397 398 |
| (K) "Premises" includes any real property or portion thereof upon which any person engages in selling tangible personal property at retail or making retail sales and also includes any real property or portion thereof designated for, or devoted to, use in conjunction with the business engaged in by such person. | 399 400 401 402 403 404 |
| (L) "Casual sale" means a sale of an item of tangible personal property that was obtained by the person making the sale, through purchase or otherwise, for the person's own use and was previously subject to any state's taxing jurisdiction on its sale or use, and includes such items acquired for the seller's use that are sold by an auctioneer employed directly by the person for such purpose, provided the location of such sales is not the auctioneer's permanent place of business. As used in this division, "permanent place of business" includes any location where such auctioneer has conducted more than two auctions during the year. | 405 406 407 408 409 410 411 412 413 414 415 |
| (M) "Hotel" means every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures, except as otherwise provided in section 5739.091 of the Revised Code. | 416 417 418 419 420 421 422 |
| (N) "Transient guests" means persons occupying a room or rooms for sleeping accommodations for less than thirty | 423 424 |

consecutive days. 425

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

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

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

physical, mechanical, or chemical processes. 455

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Analyzing business policies and procedures; 530

(c) Identifying management information needs; 531

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

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

(f) Developing policies and procedures that document how 540

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| business events and transactions are to be authorized, executed, and controlled; | 541 542 |
| (g) Testing of business procedures; | 543 |
| (h) Training personnel in business procedure applications; | 544 |
| (i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium; | 545 546 547 548 549 550 551 |
| (j) Providing debt collection services by any oral, written, graphic, or electronic means; | 552 553 |
| (k) Providing digital advertising services; | 554 |
| (l) Providing services to electronically file any federal, state, or local individual income tax return, report, or other related document or schedule with a federal, state, or local government entity or to electronically remit a payment of any such individual income tax to such an entity. For the purpose of this division, "individual income tax" does not include federal, state, or local taxes withheld by an employer from an employee's compensation. | 555 556 557 558 559 560 561 562 |
| The services listed in divisions (Y) (2) (a) to (l) of this section are not automatic data processing or computer services. | 563 564 |
| (Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following: | 565 566 567 |
| (1) The holder of a permit or certificate issued by this | 568 |

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

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

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

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

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

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

conference call, including providing a telephone number. 626

"Conference bridging service" does not include 627

telecommunications services used to reach the conference bridge. 628

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

ancillary service of separately stating information pertaining 630

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

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

providing telephone number or address information. 633

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

offered in connection with one or more telecommunications 635

services, which offers advanced calling features that allow 636

customers to identify callers and manage multiple calls and call 637

connections, including conference bridging service. 638

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

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

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

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

utilize the voice mail service. 643

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

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

customers to call in to the subscriber's prerecorded 646

announcement or live service, and which is typically marketed 647

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

designated by the federal communications commission. "900 649

service" does not include the charge for collection services 650

provided by the seller of the telecommunications service to the 651

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

the subscriber's customer. 653

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A vitamin; 947

(ii) A mineral; 948

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Fractional owner" means a person that owns or possesses at least a one-sixteenth interest in a program aircraft and has entered into the agreements described in division (III)(1)(e) of this section.

(c) "Fractional ownership program aircraft" or "program aircraft" means a turbojet aircraft that is owned or possessed by a fractional owner and that has been included in a dry-lease aircraft interchange arrangement and agreement under divisions (III)(1)(d) and (e) of this section, or an aircraft a program manager owns or possesses primarily for use in a fractional aircraft ownership program.

(d) "Management services" means administrative and

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

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

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

subject of a sale. 1066

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(SSS) "Firearm safety device" means equipment that is 1111
designed to prevent unauthorized access to, or the operation or 1112
discharge of, a firearm and that is either of the following: 1113

(1) A device that, when installed on a firearm, is 1114
designed to prevent the firearm from being operated without 1115
first deactivating the device. 1116

(2) A gun safe, gun case, lockbox, or other device that is 1117
designed to prevent access to a firearm unless an individual 1118
uses a key, a combination, biometric data, or other similar 1119
means. 1120

A "firearm safety device" does not include a glass-faced 1121

cabinet or other form of storage that is primarily designed to 1122
allow for the display of firearms. 1123

Sec. 5739.02. For the purpose of providing revenue with 1124
which to meet the needs of the state, for the use of the general 1125
revenue fund of the state, for the purpose of securing a 1126
thorough and efficient system of common schools throughout the 1127
state, for the purpose of affording revenues, in addition to 1128
those from general property taxes, permitted under 1129
constitutional limitations, and from other sources, for the 1130
support of local governmental functions, and for the purpose of 1131
reimbursing the state for the expense of administering this 1132
chapter, an excise tax is hereby levied on each retail sale made 1133
in this state. 1134

(A) (1) The tax shall be collected as provided in section 1135
5739.025 of the Revised Code. The rate of the tax shall be five 1136
and three-fourths per cent. The tax applies and is collectible 1137
when the sale is made, regardless of the time when the price is 1138
paid or delivered. 1139

(2) In the case of the lease or rental, with a fixed term 1140
of more than thirty days or an indefinite term with a minimum 1141
period of more than thirty days, of any motor vehicles designed 1142
by the manufacturer to carry a load of not more than one ton, 1143
watercraft, outboard motor, or aircraft, or of any tangible 1144
personal property, other than motor vehicles designed by the 1145
manufacturer to carry a load of more than one ton, to be used by 1146
the lessee or renter primarily for business purposes, the tax 1147
shall be collected by the vendor at the time the lease or rental 1148
is consummated and shall be calculated by the vendor on the 1149
basis of the total amount to be paid by the lessee or renter 1150
under the lease agreement. If the total amount of the 1151

consideration for the lease or rental includes amounts that are 1152
not calculated at the time the lease or rental is executed, the 1153
tax shall be calculated and collected by the vendor at the time 1154
such amounts are billed to the lessee or renter. In the case of 1155
an open-end lease or rental, the tax shall be calculated by the 1156
vendor on the basis of the total amount to be paid during the 1157
initial fixed term of the lease or rental, and for each 1158
subsequent renewal period as it comes due. As used in this 1159
division, "motor vehicle" has the same meaning as in section 1160
4501.01 of the Revised Code, and "watercraft" includes an 1161
outdrive unit attached to the watercraft. 1162

A lease with a renewal clause and a termination penalty or 1163
similar provision that applies if the renewal clause is not 1164
exercised is presumed to be a sham transaction. In such a case, 1165
the tax shall be calculated and paid on the basis of the entire 1166
length of the lease period, including any renewal periods, until 1167
the termination penalty or similar provision no longer applies. 1168
The taxpayer shall bear the burden, by a preponderance of the 1169
evidence, that the transaction or series of transactions is not 1170
a sham transaction. 1171

(3) Except as provided in division (A) (2) of this section, 1172
in the case of a sale, the price of which consists in whole or 1173
in part of the lease or rental of tangible personal property, 1174
the tax shall be measured by the installments of that lease or 1175
rental. 1176

(4) In the case of a sale of a physical fitness facility 1177
service or recreation and sports club service, the price of 1178
which consists in whole or in part of a membership for the 1179
receipt of the benefit of the service, the tax applicable to the 1180
sale shall be measured by the installments thereof. 1181

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| (B) The tax does not apply to the following: | 1182 |
| (1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions; | 1183 1184 1185 1186 |
| (2) Sales of food for human consumption off the premises where sold; | 1187 1188 |
| (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; | 1189 1190 1191 |
| (4) Sales of newspapers and sales or transfers of magazines distributed as controlled circulation publications; | 1192 1193 |
| (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; | 1194 1195 1196 1197 |
| (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 section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state; | 1198 1199 1200 1201 1202 1203 1204 1205 1206 1207 |
| (b) Sales of motor fuel other than that described in division (B) (6) (a) of this section and used for powering a refrigeration unit on a vehicle other than one used primarily to | 1208 1209 1210 |

provide comfort to the operator or occupants of the vehicle. 1211

(7) Sales of natural gas by a natural gas company or 1212
municipal gas utility, of water by a water-works company, or of 1213
steam by a heating company, if in each case the thing sold is 1214
delivered to consumers through pipes or conduits, and all sales 1215
of communications services by a telegraph company, all terms as 1216
defined in section 5727.01 of the Revised Code, and sales of 1217
electricity delivered through wires; 1218

(8) Casual sales by a person, or auctioneer employed 1219
directly by the person to conduct such sales, except as to such 1220
sales of motor vehicles, watercraft or outboard motors required 1221
to be titled under section 1548.06 of the Revised Code, 1222
watercraft documented with the United States coast guard, 1223
snowmobiles, and all-purpose vehicles as defined in section 1224
4519.01 of the Revised Code; 1225

(9) (a) Sales of services or tangible personal property, 1226
other than motor vehicles, mobile homes, and manufactured homes, 1227
by churches, organizations exempt from taxation under section 1228
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 1229
organizations operated exclusively for charitable purposes as 1230
defined in division (B) (12) of this section, provided that the 1231
number of days on which such tangible personal property or 1232
services, other than items never subject to the tax, are sold 1233
does not exceed six in any calendar year, except as otherwise 1234
provided in division (B) (9) (b) of this section. If the number of 1235
days on which such sales are made exceeds six in any calendar 1236
year, the church or organization shall be considered to be 1237
engaged in business and all subsequent sales by it shall be 1238
subject to the tax. In counting the number of days, all sales by 1239
groups within a church or within an organization shall be 1240

considered to be sales of that church or organization. 1241

(b) The limitation on the number of days on which tax- 1242
exempt sales may be made by a church or organization under 1243
division (B) (9) (a) of this section does not apply to sales made 1244
by student clubs and other groups of students of a primary or 1245
secondary school, or a parent-teacher association, booster 1246
group, or similar organization that raises money to support or 1247
fund curricular or extracurricular activities of a primary or 1248
secondary school. 1249

(c) Divisions (B) (9) (a) and (b) of this section do not 1250
apply to sales by a noncommercial educational radio or 1251
television broadcasting station. 1252

(10) Sales not within the taxing power of this state under 1253
the Constitution or laws of the United States or the 1254
Constitution of this state; 1255

(11) Except for transactions that are sales under division 1256
(B) (3) (p) of section 5739.01 of the Revised Code, the 1257
transportation of persons or property, unless the transportation 1258
is by a private investigation and security service; 1259

(12) Sales of tangible personal property or services to 1260
churches, to organizations exempt from taxation under section 1261
501(c) (3) of the Internal Revenue Code of 1986, and to any other 1262
nonprofit organizations operated exclusively for charitable 1263
purposes in this state, no part of the net income of which 1264
inures to the benefit of any private shareholder or individual, 1265
and no substantial part of the activities of which consists of 1266
carrying on propaganda or otherwise attempting to influence 1267
legislation; sales to offices administering one or more homes 1268
for the aged or one or more hospital facilities exempt under 1269

section 140.08 of the Revised Code; and sales to organizations 1270
described in division (D) of section 5709.12 of the Revised 1271
Code. 1272

"Charitable purposes" means the relief of poverty; the 1273
improvement of health through the alleviation of illness, 1274
disease, or injury; the operation of an organization exclusively 1275
for the provision of professional, laundry, printing, and 1276
purchasing services to hospitals or charitable institutions; the 1277
operation of a home for the aged, as defined in section 5701.13 1278
of the Revised Code; the operation of a radio or television 1279
broadcasting station that is licensed by the federal 1280
communications commission as a noncommercial educational radio 1281
or television station; the operation of a nonprofit animal 1282
adoption service or a county humane society; the promotion of 1283
education by an institution of learning that maintains a faculty 1284
of qualified instructors, teaches regular continuous courses of 1285
study, and confers a recognized diploma upon completion of a 1286
specific curriculum; the operation of a parent-teacher 1287
association, booster group, or similar organization primarily 1288
engaged in the promotion and support of the curricular or 1289
extracurricular activities of a primary or secondary school; the 1290
operation of a community or area center in which presentations 1291
in music, dramatics, the arts, and related fields are made in 1292
order to foster public interest and education therein; the 1293
production of performances in music, dramatics, and the arts; or 1294
the promotion of education by an organization engaged in 1295
carrying on research in, or the dissemination of, scientific and 1296
technological knowledge and information primarily for the 1297
public. 1298

Nothing in this division shall be deemed to exempt sales 1299
to any organization for use in the operation or carrying on of a 1300

trade or business, or sales to a home for the aged for use in 1301
the operation of independent living facilities as defined in 1302
division (A) of section 5709.12 of the Revised Code. 1303

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

sold to a construction contractor for incorporation into real 1332
property outside this state if such materials and services, when 1333
sold to a construction contractor in the state in which the real 1334
property is located for incorporation into real property in that 1335
state, would be exempt from a tax on sales levied by that state; 1336
building and construction materials for incorporation into a 1337
transportation facility pursuant to a public-private agreement 1338
entered into under sections 5501.70 to 5501.83 of the Revised 1339
Code; until one calendar year after the construction of a 1340
convention center that qualifies for property tax exemption 1341
under section 5709.084 of the Revised Code is completed, 1342
building and construction materials and services sold to a 1343
construction contractor for incorporation into the real property 1344
comprising that convention center; and building and construction 1345
materials sold for incorporation into a structure or improvement 1346
to real property that is used primarily as, or primarily in 1347
support of, a manufacturing facility or research and development 1348
facility and that is to be owned by a megaproject operator upon 1349
completion and located at the site of a megaproject that 1350
satisfies the criteria described in division (A) (11) (a) (ii) of 1351
section 122.17 of the Revised Code, provided that the sale 1352
occurs during the period that the megaproject operator has an 1353
agreement for such megaproject with the tax credit authority 1354
under division (D) of section 122.17 of the Revised Code that 1355
remains in effect and has not expired or been terminated. 1356

(14) Sales of ships or vessels or rail rolling stock used 1357
or to be used principally in interstate or foreign commerce, and 1358
repairs, alterations, fuel, and lubricants for such ships or 1359
vessels or rail rolling stock; 1360

(15) Sales to persons primarily engaged in any of the 1361
activities mentioned in division (B) (42) (a), (g), or (h) of this 1362

section, to persons engaged in making retail sales, or to 1363
persons who purchase for sale from a manufacturer tangible 1364
personal property that was produced by the manufacturer in 1365
accordance with specific designs provided by the purchaser, of 1366
packages, including material, labels, and parts for packages, 1367
and of machinery, equipment, and material for use primarily in 1368
packaging tangible personal property produced for sale, 1369
including any machinery, equipment, and supplies used to make 1370
labels or packages, to prepare packages or products for 1371
labeling, or to label packages or products, by or on the order 1372
of the person doing the packaging, or sold at retail. "Packages" 1373
includes bags, baskets, cartons, crates, boxes, cans, bottles, 1374
bindings, wrappings, and other similar devices and containers, 1375
but does not include motor vehicles or bulk tanks, trailers, or 1376
similar devices attached to motor vehicles. "Packaging" means 1377
placing in a package. Division (B) (15) of this section does not 1378
apply to persons engaged in highway transportation for hire. 1379

(16) Sales of food to persons using supplemental nutrition 1380
assistance program benefits to purchase the food. As used in 1381
this division, "food" has the same meaning as in 7 U.S.C. 2012 1382
and federal regulations adopted pursuant to the Food and 1383
Nutrition Act of 2008. 1384

(17) Sales to persons engaged in farming, agriculture, 1385
horticulture, or floriculture, of tangible personal property for 1386
use or consumption primarily in the production by farming, 1387
agriculture, horticulture, or floriculture of other tangible 1388
personal property for use or consumption primarily in the 1389
production of tangible personal property for sale by farming, 1390
agriculture, horticulture, or floriculture; or material and 1391
parts for incorporation into any such tangible personal property 1392
for use or consumption in production; and of tangible personal 1393

property for such use or consumption in the conditioning or 1394
holding of products produced by and for such use, consumption, 1395
or sale by persons engaged in farming, agriculture, 1396
horticulture, or floriculture, except where such property is 1397
incorporated into real property; 1398

(18) Sales of drugs for a human being that may be 1399
dispensed only pursuant to a prescription; insulin as recognized 1400
in the official United States pharmacopoeia; urine and blood 1401
testing materials when used by diabetics or persons with 1402
hypoglycemia to test for glucose or acetone; hypodermic syringes 1403
and needles when used by diabetics for insulin injections; 1404
epoetin alfa when purchased for use in the treatment of persons 1405
with medical disease; hospital beds when purchased by hospitals, 1406
nursing homes, or other medical facilities; and medical oxygen 1407
and medical oxygen-dispensing equipment when purchased by 1408
hospitals, nursing homes, or other medical facilities; 1409

(19) Sales of prosthetic devices, durable medical 1410
equipment for home use, or mobility enhancing equipment, when 1411
made pursuant to a prescription and when such devices or 1412
equipment are for use by a human being. 1413

(20) Sales of emergency and fire protection vehicles and 1414
equipment to nonprofit organizations for use solely in providing 1415
fire protection and emergency services, including trauma care 1416
and emergency medical services, for political subdivisions of 1417
the state; 1418

(21) Sales of tangible personal property manufactured in 1419
this state, if sold by the manufacturer in this state to a 1420
retailer for use in the retail business of the retailer outside 1421
of this state and if possession is taken from the manufacturer 1422
by the purchaser within this state for the sole purpose of 1423

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| immediately removing the same from this state in a vehicle owned | 1424 |
| by the purchaser; | 1425 |
| (22) Sales of services provided by the state or any of its | 1426 |
| political subdivisions, agencies, instrumentalities, | 1427 |
| institutions, or authorities, or by governmental entities of the | 1428 |
| state or any of its political subdivisions, agencies, | 1429 |
| instrumentalities, institutions, or authorities; | 1430 |
| (23) Sales of motor vehicles to nonresidents of this state | 1431 |
| under the circumstances described in division (B) of section | 1432 |
| 5739.029 of the Revised Code; | 1433 |
| (24) Sales to persons engaged in the preparation of eggs | 1434 |
| for sale of tangible personal property used or consumed directly | 1435 |
| in such preparation, including such tangible personal property | 1436 |
| used for cleaning, sanitizing, preserving, grading, sorting, and | 1437 |
| classifying by size; packages, including material and parts for | 1438 |
| packages, and machinery, equipment, and material for use in | 1439 |
| packaging eggs for sale; and handling and transportation | 1440 |
| equipment and parts therefor, except motor vehicles licensed to | 1441 |
| operate on public highways, used in intraplant or interplant | 1442 |
| transfers or shipment of eggs in the process of preparation for | 1443 |
| sale, when the plant or plants within or between which such | 1444 |
| transfers or shipments occur are operated by the same person. | 1445 |
| "Packages" includes containers, cases, baskets, flats, fillers, | 1446 |
| filler flats, cartons, closure materials, labels, and labeling | 1447 |
| materials, and "packaging" means placing therein. | 1448 |
| (25) (a) Sales of water to a consumer for residential use; | 1449 |
| (b) Sales of water by a nonprofit corporation engaged | 1450 |
| exclusively in the treatment, distribution, and sale of water to | 1451 |
| consumers, if such water is delivered to consumers through pipes | 1452 |

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| or tubing. | 1453 |
| (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code; | 1454 1455 |
| (27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following: | 1456 1457 1458 1459 |
| (a) To prepare food for human consumption for sale; | 1460 |
| (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer; | 1461 1462 1463 1464 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale. | 1465 1466 |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies; | 1467 1468 |
| (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code; | 1469 1470 1471 1472 |
| (30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code; | 1473 1474 1475 |
| (31) Sales and erection or installation of portable grain bins, as defined in division (B) (5) (b) of section 5739.01 of the Revised Code; | 1476 1477 1478 |
| (32) The sale, lease, repair, and maintenance of, parts | 1479 |

for, or items attached to or incorporated in, motor vehicles 1480
that are primarily used for transporting tangible personal 1481
property belonging to others by a person engaged in highway 1482
transportation for hire, except for packages and packaging used 1483
for the transportation of tangible personal property; 1484

(33) Sales to the state headquarters of any veterans' 1485
organization in this state that is either incorporated and 1486
issued a charter by the congress of the United States or is 1487
recognized by the United States veterans administration, for use 1488
by the headquarters; 1489

(34) Sales to a telecommunications service vendor, mobile 1490
telecommunications service vendor, or satellite broadcasting 1491
service vendor of tangible personal property and services used 1492
directly and primarily in transmitting, receiving, switching, or 1493
recording any interactive, one- or two-way electromagnetic 1494
communications, including voice, image, data, and information, 1495
through the use of any medium, including, but not limited to, 1496
poles, wires, cables, switching equipment, computers, and record 1497
storage devices and media, and component parts for the tangible 1498
personal property. The exemption provided in this division shall 1499
be in lieu of all other exemptions under division (B) (42) (a) or 1500
(n) of this section to which the vendor may otherwise be 1501
entitled, based upon the use of the thing purchased in providing 1502
the telecommunications, mobile telecommunications, or satellite 1503
broadcasting service. 1504

(35) (a) Sales where the purpose of the consumer is to use 1505
or consume the things transferred in making retail sales and 1506
consisting of newspaper inserts, catalogues, coupons, flyers, 1507
gift certificates, or other advertising material that prices and 1508
describes tangible personal property offered for retail sale. 1509

(b) Sales to direct marketing vendors of preliminary 1510
materials such as photographs, artwork, and typesetting that 1511
will be used in printing advertising material; and of printed 1512
matter that offers free merchandise or chances to win sweepstake 1513
prizes and that is mailed to potential customers with 1514
advertising material described in division (B) (35) (a) of this 1515
section; 1516

(c) Sales of equipment such as telephones, computers, 1517
facsimile machines, and similar tangible personal property 1518
primarily used to accept orders for direct marketing retail 1519
sales. 1520

(d) Sales of automatic food vending machines that preserve 1521
food with a shelf life of forty-five days or less by 1522
refrigeration and dispense it to the consumer. 1523

For purposes of division (B) (35) of this section, "direct 1524
marketing" means the method of selling where consumers order 1525
tangible personal property by United States mail, delivery 1526
service, or telecommunication and the vendor delivers or ships 1527
the tangible personal property sold to the consumer from a 1528
warehouse, catalogue distribution center, or similar fulfillment 1529
facility by means of the United States mail, delivery service, 1530
or common carrier. 1531

(36) Sales to a person engaged in the business of 1532
horticulture or producing livestock of materials to be 1533
incorporated into a horticulture structure or livestock 1534
structure; 1535

(37) Sales of personal computers, computer monitors, 1536
computer keyboards, modems, and other peripheral computer 1537
equipment to an individual who is licensed or certified to teach 1538

in an elementary or a secondary school in this state for use by 1539
that individual in preparation for teaching elementary or 1540
secondary school students; 1541

(38) Sales of tangible personal property that is not 1542
required to be registered or licensed under the laws of this 1543
state to a citizen of a foreign nation that is not a citizen of 1544
the United States, provided the property is delivered to a 1545
person in this state that is not a related member of the 1546
purchaser, is physically present in this state for the sole 1547
purpose of temporary storage and package consolidation, and is 1548
subsequently delivered to the purchaser at a delivery address in 1549
a foreign nation. As used in division (B)(38) of this section, 1550
"related member" has the same meaning as in section 5733.042 of 1551
the Revised Code, and "temporary storage" means the storage of 1552
tangible personal property for a period of not more than sixty 1553
days. 1554

(39) Sales of used manufactured homes and used mobile 1555
homes, as defined in section 5739.0210 of the Revised Code, made 1556
on or after January 1, 2000; 1557

(40) Sales of tangible personal property and services to a 1558
provider of electricity used or consumed directly and primarily 1559
in generating, transmitting, or distributing electricity for use 1560
by others, including property that is or is to be incorporated 1561
into and will become a part of the consumer's production, 1562
transmission, or distribution system and that retains its 1563
classification as tangible personal property after 1564
incorporation; fuel or power used in the production, 1565
transmission, or distribution of electricity; energy conversion 1566
equipment as defined in section 5727.01 of the Revised Code; and 1567
tangible personal property and services used in the repair and 1568

maintenance of the production, transmission, or distribution 1569
system, including only those motor vehicles as are specially 1570
designed and equipped for such use. The exemption provided in 1571
this division shall be in lieu of all other exemptions in 1572
division (B) (42) (a) or (n) of this section to which a provider 1573
of electricity may otherwise be entitled based on the use of the 1574
tangible personal property or service purchased in generating, 1575
transmitting, or distributing electricity. 1576

(41) Sales to a person providing services under division 1577
(B) (3) (p) of section 5739.01 of the Revised Code of tangible 1578
personal property and services used directly and primarily in 1579
providing taxable services under that section. 1580

(42) Sales where the purpose of the purchaser is to do any 1581
of the following: 1582

(a) To incorporate the thing transferred as a material or 1583
a part into tangible personal property to be produced for sale 1584
by manufacturing, assembling, processing, or refining; or to use 1585
or consume the thing transferred directly in producing tangible 1586
personal property for sale by mining, including, without 1587
limitation, the extraction from the earth of all substances that 1588
are classed geologically as minerals, or directly in the 1589
rendition of a public utility service, except that the sales tax 1590
levied by this section shall be collected upon all meals, 1591
drinks, and food for human consumption sold when transporting 1592
persons. This paragraph does not exempt from "retail sale" or 1593
"sales at retail" the sale of tangible personal property that is 1594
to be incorporated into a structure or improvement to real 1595
property. 1596

(b) To hold the thing transferred as security for the 1597
performance of an obligation of the vendor; 1598

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| (c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance; | 1599 1600 |
| (d) To use or consume the thing directly in commercial fishing; | 1601 1602 |
| (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; | 1603 1604 1605 1606 |
| (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; | 1607 1608 1609 1610 1611 |
| (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; | 1612 1613 1614 |
| (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; | 1615 1616 1617 1618 1619 1620 |
| (i) To use the thing transferred as qualified research and development equipment; | 1621 1622 |
| (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 | 1623 1624 1625 1626 1627 |

the warehouse, distribution center, or similar facility, to 1628
retail stores of an affiliated group of which that person is a 1629
member, or by means of direct marketing. This division does not 1630
apply to motor vehicles registered for operation on the public 1631
highways. As used in this division, "affiliated group" has the 1632
same meaning as in division (B) (3) (e) of section 5739.01 of the 1633
Revised Code and "direct marketing" has the same meaning as in 1634
division (B) (35) of this section. 1635

(k) To use or consume the thing transferred to fulfill a 1636
contractual obligation incurred by a warrantor pursuant to a 1637
warranty provided as a part of the price of the tangible 1638
personal property sold or by a vendor of a warranty, maintenance 1639
or service contract, or similar agreement the provision of which 1640
is defined as a sale under division (B) (7) of section 5739.01 of 1641
the Revised Code; 1642

(l) To use or consume the thing transferred in the 1643
production of a newspaper for distribution to the public; 1644

(m) To use tangible personal property to perform a service 1645
listed in division (B) (3) of section 5739.01 of the Revised 1646
Code, if the property is or is to be permanently transferred to 1647
the consumer of the service as an integral part of the 1648
performance of the service; 1649

(n) To use or consume the thing transferred primarily in 1650
producing tangible personal property for sale by farming, 1651
agriculture, horticulture, or floriculture. Persons engaged in 1652
rendering farming, agriculture, horticulture, or floriculture 1653
services for others are deemed engaged primarily in farming, 1654
agriculture, horticulture, or floriculture. This paragraph does 1655
not exempt from "retail sale" or "sales at retail" the sale of 1656
tangible personal property that is to be incorporated into a 1657

structure or improvement to real property. 1658

(o) To use or consume the thing transferred in acquiring, 1659
formatting, editing, storing, and disseminating data or 1660
information by electronic publishing; 1661

(p) To provide the thing transferred to the owner or 1662
lessee of a motor vehicle that is being repaired or serviced, if 1663
the thing transferred is a rented motor vehicle and the 1664
purchaser is reimbursed for the cost of the rented motor vehicle 1665
by a manufacturer, warrantor, or provider of a maintenance, 1666
service, or other similar contract or agreement, with respect to 1667
the motor vehicle that is being repaired or serviced; 1668

(q) To use or consume the thing transferred directly in 1669
production of crude oil and natural gas for sale. Persons 1670
engaged in rendering production services for others are deemed 1671
engaged in production. 1672

As used in division (B) (42) (q) of this section, 1673
"production" means operations and tangible personal property 1674
directly used to expose and evaluate an underground reservoir 1675
that may contain hydrocarbon resources, prepare the wellbore for 1676
production, and lift and control all substances yielded by the 1677
reservoir to the surface of the earth. 1678

(i) For the purposes of division (B) (42) (q) of this 1679
section, the "thing transferred" includes, but is not limited 1680
to, any of the following: 1681

(I) Services provided in the construction of permanent 1682
access roads, services provided in the construction of the well 1683
site, and services provided in the construction of temporary 1684
impoundments; 1685

(II) Equipment and rigging used for the specific purpose 1686

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| of creating with integrity a wellbore pathway to underground reservoirs; | 1687 1688 |
| (III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services; | 1689 1690 1691 |
| (IV) Casing, tubulars, and float and centralizing equipment; | 1692 1693 |
| (V) Trailers to which production equipment is attached; | 1694 |
| (VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services; | 1695 1696 1697 |
| (VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services; | 1698 1699 1700 |
| (VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole; | 1701 1702 1703 1704 |
| (IX) Pressure pumping equipment; | 1705 |
| (X) Artificial lift systems equipment; | 1706 |
| (XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water; | 1707 1708 1709 |
| (XII) Tangible personal property directly used to control production equipment. | 1710 1711 |
| (ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the | 1712 1713 |

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| following: | 1714 |
| (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; | 1715 1716 1717 |
| (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; | 1718 1719 1720 |
| (III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks; | 1721 1722 1723 |
| (IV) Tangible personal property used primarily in transporting, delivering, or removing equipment to or from the well site or storing such equipment before its use at the well site; | 1724 1725 1726 1727 |
| (V) Tangible personal property used primarily in gathering operations occurring off the well site, including gathering pipelines transporting hydrocarbon gas or liquids away from a crude oil or natural gas production facility; | 1728 1729 1730 1731 |
| (VI) Tangible personal property that is to be incorporated into a structure or improvement to real property; | 1732 1733 |
| (VII) Well site fencing, lighting, or security systems; | 1734 |
| (VIII) Communication devices or services; | 1735 |
| (IX) Office supplies; | 1736 |
| (X) Trailers used as offices or lodging; | 1737 |
| (XI) Motor vehicles of any kind; | 1738 |
| (XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production; | 1739 1740 |

(XIII) Tangible personal property used primarily as a safety device; 1741
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(XIV) Data collection or monitoring devices; 1743

(XV) Access ladders, stairs, or platforms attached to storage tanks. 1744
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The enumeration of tangible personal property in division (B) (42) (q) (ii) of this section is not intended to be exhaustive, and any tangible personal property not so enumerated shall not necessarily be construed to be a "thing transferred" for the purposes of division (B) (42) (q) of this section. 1746
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The commissioner shall adopt and promulgate rules under sections 119.01 to 119.13 of the Revised Code that the commissioner deems necessary to administer division (B) (42) (q) of this section. 1751
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As used in division (B) (42) of this section, "thing" includes all transactions included in divisions (B) (3) (a), (b), and (e) of section 5739.01 of the Revised Code. 1755
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(43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction. 1758
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(44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and 1765
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| supplies primarily used to provide those services. | 1770 |
| (45) Sales of telecommunications service that is used | 1771 |
| directly and primarily to perform the functions of a call | 1772 |
| center. As used in this division, "call center" means any | 1773 |
| physical location where telephone calls are placed or received | 1774 |
| in high volume for the purpose of making sales, marketing, | 1775 |
| customer service, technical support, or other specialized | 1776 |
| business activity, and that employs at least fifty individuals | 1777 |
| that engage in call center activities on a full-time basis, or | 1778 |
| sufficient individuals to fill fifty full-time equivalent | 1779 |
| positions. | 1780 |
| (46) Sales by a telecommunications service vendor of 900 | 1781 |
| service to a subscriber. This division does not apply to | 1782 |
| information services. | 1783 |
| (47) Sales of value-added non-voice data service. This | 1784 |
| division does not apply to any similar service that is not | 1785 |
| otherwise a telecommunications service. | 1786 |
| (48) Sales of feminine hygiene products. | 1787 |
| (49) Sales of materials, parts, equipment, or engines used | 1788 |
| in the repair or maintenance of aircraft or avionics systems of | 1789 |
| such aircraft, and sales of repair, remodeling, replacement, or | 1790 |
| maintenance services in this state performed on aircraft or on | 1791 |
| an aircraft's avionics, engine, or component materials or parts. | 1792 |
| As used in division (B) (49) of this section, "aircraft" means | 1793 |
| aircraft of more than six thousand pounds maximum certified | 1794 |
| takeoff weight or used exclusively in general aviation. | 1795 |
| (50) Sales of full flight simulators that are used for | 1796 |
| pilot or flight-crew training, sales of repair or replacement | 1797 |
| parts or components, and sales of repair or maintenance services | 1798 |

for such full flight simulators. "Full flight simulator" means a 1799
replica of a specific type, or make, model, and series of 1800
aircraft cockpit. It includes the assemblage of equipment and 1801
computer programs necessary to represent aircraft operations in 1802
ground and flight conditions, a visual system providing an out- 1803
of-the-cockpit view, and a system that provides cues at least 1804
equivalent to those of a three-degree-of-freedom motion system, 1805
and has the full range of capabilities of the systems installed 1806
in the device as described in appendices A and B of part 60 of 1807
chapter 1 of title 14 of the Code of Federal Regulations. 1808

(51) Any transfer or lease of tangible personal property 1809
between the state and JobsOhio in accordance with section 1810
4313.02 of the Revised Code. 1811

(52) (a) Sales to a qualifying corporation. 1812

(b) As used in division (B) (52) of this section: 1813

(i) "Qualifying corporation" means a nonprofit corporation 1814
organized in this state that leases from an eligible county 1815
land, buildings, structures, fixtures, and improvements to the 1816
land that are part of or used in a public recreational facility 1817
used by a major league professional athletic team or a class A 1818
to class AAA minor league affiliate of a major league 1819
professional athletic team for a significant portion of the 1820
team's home schedule, provided the following apply: 1821

(I) The facility is leased from the eligible county 1822
pursuant to a lease that requires substantially all of the 1823
revenue from the operation of the business or activity conducted 1824
by the nonprofit corporation at the facility in excess of 1825
operating costs, capital expenditures, and reserves to be paid 1826
to the eligible county at least once per calendar year. 1827

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

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

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

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

(a) Accepts direct payments to operate;

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

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

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

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| (i) An item of clothing, the price of which is seventy- | 1856 |
| five dollars or less; | 1857 |
| (ii) An item of school supplies, the price of which is | 1858 |
| twenty dollars or less; | 1859 |
| (iii) An item of school instructional material, the price | 1860 |
| of which is twenty dollars or less. | 1861 |
| (b) As used in division (B) (55) of this section: | 1862 |
| (i) "Clothing" means all human wearing apparel suitable | 1863 |
| for general use. "Clothing" includes, but is not limited to, | 1864 |
| aprons, household and shop; athletic supporters; baby receiving | 1865 |
| blankets; bathing suits and caps; beach capes and coats; belts | 1866 |
| and suspenders; boots; coats and jackets; costumes; diapers, | 1867 |
| children and adult, including disposable diapers; earmuffs; | 1868 |
| footlets; formal wear; garters and garter belts; girdles; gloves | 1869 |
| and mittens for general use; hats and caps; hosiery; insoles for | 1870 |
| shoes; lab coats; neckties; overshoes; pantyhose; rainwear; | 1871 |
| rubber pants; sandals; scarves; shoes and shoe laces; slippers; | 1872 |
| sneakers; socks and stockings; steel-toed shoes; underwear; | 1873 |
| uniforms, athletic and nonathletic; and wedding apparel. | 1874 |
| "Clothing" does not include items purchased for use in a trade | 1875 |
| or business; clothing accessories or equipment; protective | 1876 |
| equipment; sports or recreational equipment; belt buckles sold | 1877 |
| separately; costume masks sold separately; patches and emblems | 1878 |
| sold separately; sewing equipment and supplies including, but | 1879 |
| not limited to, knitting needles, patterns, pins, scissors, | 1880 |
| sewing machines, sewing needles, tape measures, and thimbles; | 1881 |
| and sewing materials that become part of "clothing" including, | 1882 |
| but not limited to, buttons, fabric, lace, thread, yarn, and | 1883 |
| zippers. | 1884 |

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

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

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

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

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

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| or bowel movements. | 1915 |
| (ii) "Incontinence underpad" means an absorbent product, | 1916 |
| not worn on the body, designed to protect furniture or other | 1917 |
| tangible personal property from soiling or damage due to human | 1918 |
| incontinence. | 1919 |
| (57) Sales of investment metal bullion and investment | 1920 |
| coins. "Investment metal bullion" means any bullion described in | 1921 |
| section 408(m) (3) (B) of the Internal Revenue Code, regardless of | 1922 |
| whether that bullion is in the physical possession of a trustee. | 1923 |
| "Investment coin" means any coin composed primarily of gold, | 1924 |
| silver, platinum, or palladium. | 1925 |
| (58) Sales of tangible personal property used primarily | 1926 |
| for any of the following purposes by a megaproject operator at | 1927 |
| the site of a megaproject that satisfies the criteria described | 1928 |
| in division (A) (11) (a) (ii) of section 122.17 of the Revised | 1929 |
| Code, provided that the sale occurs during the period that the | 1930 |
| megaproject operator has an agreement for such megaproject with | 1931 |
| the tax credit authority under division (D) of section 122.17 of | 1932 |
| the Revised Code that remains in effect and has not expired or | 1933 |
| been terminated: | 1934 |
| (a) To store, transmit, convey, distribute, recycle, | 1935 |
| circulate, or clean water, steam, or other gases used in or | 1936 |
| produced as a result of manufacturing activity, including items | 1937 |
| that support or aid in the operation of such property; | 1938 |
| (b) To clean or prepare inventory, at any stage of storage | 1939 |
| or production, or equipment used in a manufacturing activity, | 1940 |
| including chemicals, solvents, catalysts, soaps, and other items | 1941 |
| that support or aid in the operation of property; | 1942 |
| (c) To regulate, treat, filter, condition, improve, clean, | 1943 |

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| maintain, or monitor environmental conditions within areas where | 1944 |
| manufacturing activities take place; | 1945 |
| (d) To handle, transport, or convey inventory during | 1946 |
| production or manufacturing. | 1947 |
| (59) Documentary services charges imposed pursuant to | 1948 |
| section 4517.261 or 4781.24 of the Revised Code. | 1949 |
| <u>(60) Sales of firearm safety devices.</u> | 1950 |
| (C) For the purpose of the proper administration of this | 1951 |
| chapter, and to prevent the evasion of the tax, it is presumed | 1952 |
| that all sales made in this state are subject to the tax until | 1953 |
| the contrary is established. | 1954 |
| (D) The tax collected by the vendor from the consumer | 1955 |
| under this chapter is not part of the price, but is a tax | 1956 |
| collection for the benefit of the state, and of counties levying | 1957 |
| an additional sales tax pursuant to section 5739.021 or 5739.026 | 1958 |
| of the Revised Code and of transit authorities levying an | 1959 |
| additional sales tax pursuant to section 5739.023 of the Revised | 1960 |
| Code. Except for the discount authorized under section 5739.12 | 1961 |
| of the Revised Code and the effects of any rounding pursuant to | 1962 |
| section 5703.055 of the Revised Code, no person other than the | 1963 |
| state or such a county or transit authority shall derive any | 1964 |
| benefit from the collection or payment of the tax levied by this | 1965 |
| section or section 5739.021, 5739.023, or 5739.026 of the | 1966 |
| Revised Code. | 1967 |
| Sec. 5739.03. (A) Except as provided in section 5739.05 or | 1968 |
| section 5739.051 of the Revised Code, the tax imposed by or | 1969 |
| pursuant to section 5739.02, 5739.021, 5739.023, or 5739.026 of | 1970 |
| the Revised Code shall be paid by the consumer to the vendor, | 1971 |
| and each vendor shall collect from the consumer, as a trustee | 1972 |

for the state of Ohio, the full and exact amount of the tax 1973
payable on each taxable sale, in the manner and at the times 1974
provided as follows: 1975

(1) If the price is, at or prior to the provision of the 1976
service or the delivery of possession of the thing sold to the 1977
consumer, paid in currency passed from hand to hand by the 1978
consumer or the consumer's agent to the vendor or the vendor's 1979
agent, the vendor or the vendor's agent shall collect the tax 1980
with and at the same time as the price; 1981

(2) If the price is otherwise paid or to be paid, the 1982
vendor or the vendor's agent shall, at or prior to the provision 1983
of the service or the delivery of possession of the thing sold 1984
to the consumer, charge the tax imposed by or pursuant to 1985
section 5739.02, 5739.021, 5739.023, or 5739.026 of the Revised 1986
Code to the account of the consumer, which amount shall be 1987
collected by the vendor from the consumer in addition to the 1988
price. Such sale shall be reported on and the amount of the tax 1989
applicable thereto shall be remitted with the return for the 1990
period in which the sale is made, and the amount of the tax 1991
shall become a legal charge in favor of the vendor and against 1992
the consumer. 1993

(B) (1) (a) If any sale is claimed to be exempt under 1994
division (E) of section 5739.01 of the Revised Code or under 1995
section 5739.02 of the Revised Code, with the exception of 1996
divisions (B) (1) to (11), (28), (48), (55), ~~or (59)~~, or (60) of 1997
section 5739.02 of the Revised Code, the consumer must provide 1998
to the vendor, and the vendor must obtain from the consumer, a 1999
certificate specifying the reason that the sale is not legally 2000
subject to the tax. The certificate shall be in such form, and 2001
shall be provided either in a hard copy form or electronic form, 2002

as the tax commissioner prescribes. 2003

(b) A vendor that obtains a fully completed exemption 2004
certificate from a consumer is relieved of liability for 2005
collecting and remitting tax on any sale covered by that 2006
certificate. If it is determined the exemption was improperly 2007
claimed, the consumer shall be liable for any tax due on that 2008
sale under section 5739.02, 5739.021, 5739.023, or 5739.026 or 2009
Chapter 5741. of the Revised Code. Relief under this division 2010
from liability does not apply to any of the following: 2011

(i) A vendor that fraudulently fails to collect tax; 2012

(ii) A vendor that solicits consumers to participate in 2013
the unlawful claim of an exemption; 2014

(iii) A vendor that accepts an exemption certificate from 2015
a consumer that claims an exemption based on who purchases or 2016
who sells property or a service, when the subject of the 2017
transaction sought to be covered by the exemption certificate is 2018
actually received by the consumer at a location operated by the 2019
vendor in this state, and this state has posted to its web site 2020
an exemption certificate form that clearly and affirmatively 2021
indicates that the claimed exemption is not available in this 2022
state; 2023

(iv) A vendor that accepts an exemption certificate from a 2024
consumer who claims a multiple points of use exemption under 2025
division (D) of section 5739.033 of the Revised Code, if the 2026
item purchased is tangible personal property, other than 2027
prewritten computer software. 2028

(2) The vendor shall maintain records, including exemption 2029
certificates, of all sales on which a consumer has claimed an 2030
exemption, and provide them to the tax commissioner on request. 2031

(3) The tax commissioner may establish an identification system whereby the commissioner issues an identification number to a consumer that is exempt from payment of the tax. The consumer must present the number to the vendor, if any sale is claimed to be exempt as provided in this section.

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

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

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

commissioner prescribes. 2062

(C) As used in this division, "contractee" means a person 2063
who seeks to enter or enters into a contract or agreement with a 2064
contractor or vendor for the construction of real property or 2065
for the sale and installation onto real property of tangible 2066
personal property. 2067

Any contractor or vendor may request from any contractee a 2068
certification of what portion of the property to be transferred 2069
under such contract or agreement is to be incorporated into the 2070
realty and what portion will retain its status as tangible 2071
personal property after installation is completed. The 2072
contractor or vendor shall request the certification by 2073
certified mail delivered to the contractee, return receipt 2074
requested. Upon receipt of such request and prior to entering 2075
into the contract or agreement, the contractee shall provide to 2076
the contractor or vendor a certification sufficiently detailed 2077
to enable the contractor or vendor to ascertain the resulting 2078
classification of all materials purchased or fabricated by the 2079
contractor or vendor and transferred to the contractee. This 2080
requirement applies to a contractee regardless of whether the 2081
contractee holds a direct payment permit under section 5739.031 2082
of the Revised Code or provides to the contractor or vendor an 2083
exemption certificate as provided under this section. 2084

For the purposes of the taxes levied by this chapter and 2085
Chapter 5741. of the Revised Code, the contractor or vendor may 2086
in good faith rely on the contractee's certification. 2087
Notwithstanding division (B) of section 5739.01 of the Revised 2088
Code, if the tax commissioner determines that certain property 2089
certified by the contractee as tangible personal property 2090
pursuant to this division is, in fact, real property, the 2091

contractee shall be considered to be the consumer of all 2092
materials so incorporated into that real property and shall be 2093
liable for the applicable tax, and the contractor or vendor 2094
shall be excused from any liability on those materials. 2095

If a contractee fails to provide such certification upon 2096
the request of the contractor or vendor, the contractor or 2097
vendor shall comply with the provisions of this chapter and 2098
Chapter 5741. of the Revised Code without the certification. If 2099
the tax commissioner determines that such compliance has been 2100
performed in good faith and that certain property treated as 2101
tangible personal property by the contractor or vendor is, in 2102
fact, real property, the contractee shall be considered to be 2103
the consumer of all materials so incorporated into that real 2104
property and shall be liable for the applicable tax, and the 2105
construction contractor or vendor shall be excused from any 2106
liability on those materials. 2107

This division does not apply to any contract or agreement 2108
where the tax commissioner determines as a fact that a 2109
certification under this division was made solely on the 2110
decision or advice of the contractor or vendor. 2111

(D) Notwithstanding division (B) of section 5739.01 of the 2112
Revised Code, whenever the total rate of tax imposed under this 2113
chapter is increased after the date after a construction 2114
contract is entered into, the contractee shall reimburse the 2115
construction contractor for any additional tax paid on tangible 2116
property consumed or services received pursuant to the contract. 2117

(E) A vendor who files a petition for reassessment 2118
contesting the assessment of tax on sales for which the vendor 2119
obtained no valid exemption certificates and for which the 2120
vendor failed to establish that the sales were properly not 2121

subject to the tax during the one-hundred-twenty-day period 2122
allowed under division (B) of this section, may present to the 2123
tax commissioner additional evidence to prove that the sales 2124
were properly subject to a claim of exception or exemption. The 2125
vendor shall file such evidence within ninety days of the 2126
receipt by the vendor of the notice of assessment, except that, 2127
upon application and for reasonable cause, the period for 2128
submitting such evidence shall be extended thirty days. 2129

The commissioner shall consider such additional evidence 2130
in reaching the final determination on the assessment and 2131
petition for reassessment. 2132

(F) Whenever a vendor refunds the price, minus any 2133
separately stated delivery charge, of an item of tangible 2134
personal property on which the tax imposed under this chapter 2135
has been paid, the vendor shall also refund the amount of tax 2136
paid, minus the amount of tax attributable to the delivery 2137
charge. 2138

Sec. 5739.17. (A) No person shall engage in making retail 2139
sales subject to a tax imposed by or pursuant to section 2140
5739.02, 5739.021, 5739.023, or 5739.026 of the Revised Code as 2141
a business without having a license therefor, except as 2142
otherwise provided in divisions (A) (1), (2), and (3) of this 2143
section. 2144

(1) In the dissolution of a partnership by death, the 2145
surviving partner may operate under the license of the 2146
partnership for a period of sixty days. 2147

(2) The heirs or legal representatives of deceased 2148
persons, and receivers and trustees in bankruptcy, appointed by 2149
any competent authority, may operate under the license of the 2150

person so succeeded in possession. 2151

(3) Two or more persons who are not partners may operate a 2152
single place of business under one license. In such case neither 2153
the retirement of any such person from business at that place of 2154
business, nor the entrance of any person, under an existing 2155
arrangement, shall affect the license or require the issuance of 2156
a new license, unless the person retiring from the business is 2157
the individual named on the vendor's license. 2158

Except as otherwise provided in this section, each 2159
applicant for a license shall make out and deliver to the county 2160
auditor of each county in which the applicant desires to engage 2161
in business, upon a blank to be furnished by such auditor for 2162
that purpose, a statement showing the name of the applicant, 2163
each place of business in the county where the applicant will 2164
make retail sales, the nature of the business, and any other 2165
information the tax commissioner reasonably prescribes in the 2166
form of a statement prescribed by the commissioner. 2167

At the time of making the application, the applicant shall 2168
pay into the county treasury a license fee in the sum of twenty- 2169
five dollars for each fixed place of business in the county that 2170
will be the situs of retail sales. Upon receipt of the 2171
application and exhibition of the county treasurer's receipt, 2172
showing the payment of the license fee, the county auditor shall 2173
issue to the applicant a license for each fixed place of 2174
business designated in the application, authorizing the 2175
applicant to engage in business at that location. 2176

(B) If a vendor's identity changes, the vendor shall apply 2177
for a new license. If a vendor wishes to move an existing fixed 2178
place of business to a new location within the same county, the 2179
vendor shall obtain a new vendor's license or submit a request 2180

to the commissioner to transfer the existing vendor's license to 2181
the new location. When the new location has been verified as 2182
being within the same county, the commissioner shall authorize 2183
the transfer and notify the county auditor of the change of 2184
location. If a vendor wishes to move an existing fixed place of 2185
business to another county, the vendor's license shall not 2186
transfer and the vendor shall obtain a new vendor's license from 2187
the county in which the business is to be located. The form of 2188
the license shall be prescribed by the commissioner. The fees 2189
collected shall be credited to the general fund of the county. 2190
If a vendor fails to notify the commissioner of a change of 2191
location of its fixed place of business or that its business has 2192
closed, the commissioner may cancel the vendor's license if 2193
ordinary mail sent to the location shown on the license is 2194
returned because of an undeliverable address. 2195

(C) The commissioner may establish or participate in a 2196
registration system whereby any vendor may obtain a vendor's 2197
license by submitting to the commissioner a vendor's license 2198
application and a license fee of twenty-five dollars for each 2199
fixed place of business at which the vendor intends to make 2200
retail sales. Under this registration system, the commissioner 2201
shall issue a vendor's license to the applicant on behalf of the 2202
county auditor of the county in which the applicant desires to 2203
engage in business, and shall forward a copy of the application 2204
and license fee to that county. All such license fees received 2205
by the commissioner for the issuance of vendor's licenses shall 2206
be deposited into the vendor's license application fund, which 2207
is hereby created in the state treasury. The commissioner shall 2208
certify to the director of budget and management within ten 2209
business days after the close of a month the license fees to be 2210
transmitted to each county from the vendor's license application 2211

fund for vendor's license applications received by the 2212
commissioner during that month. License fees transmitted to a 2213
county for which payment was not received by the commissioner 2214
may be netted against a future distribution to that county, 2215
including distributions made pursuant to section 5739.21 of the 2216
Revised Code. 2217

A vendor that makes retail sales subject to tax under 2218
Chapter 5739. of the Revised Code pursuant to a permit issued by 2219
the division of liquor control shall obtain a vendor's license 2220
in the identical name and for the identical address as shown on 2221
the permit. 2222

Except as otherwise provided in this section, if a vendor 2223
has no fixed place of business and sells from a vehicle, each 2224
vehicle intended to be used within a county constitutes a place 2225
of business for the purpose of this section. 2226

(D) As used in this section, "transient vendor" means any 2227
person who makes sales of tangible personal property from 2228
vending machines located on land owned by others, who leases 2229
titled motor vehicles, titled watercraft, or titled outboard 2230
motors, who effectuates leases that are taxed according to 2231
division (A)(2) of section 5739.02 of the Revised Code, or who, 2232
in the usual course of the person's business, transports 2233
inventory, stock of goods, or similar tangible personal property 2234
to a temporary place of business or temporary exhibition, show, 2235
fair, flea market, or similar event in a county in which the 2236
person has no fixed place of business, for the purpose of making 2237
retail sales of such property. A "temporary place of business" 2238
means any public or quasi-public place including, but not 2239
limited to, a hotel, rooming house, storeroom, building, part of 2240
a building, tent, vacant lot, railroad car, or motor vehicle 2241

that is temporarily occupied for the purpose of making retail 2242
sales of goods to the public. A place of business is not 2243
temporary if the same person conducted business at the place 2244
continuously for more than six months or occupied the premises 2245
as the person's permanent residence for more than six months, or 2246
if the person intends it to be a fixed place of business. 2247

Any transient vendor, in lieu of obtaining a vendor's 2248
license under division (A) of this section for counties in which 2249
the transient vendor has no fixed place of business, may apply 2250
to the tax commissioner, on a form prescribed by the 2251
commissioner, for a transient vendor's license. The transient 2252
vendor's license authorizes the transient vendor to make retail 2253
sales in any county in which the transient vendor does not 2254
maintain a fixed place of business. Any holder of a transient 2255
vendor's license shall not be required to obtain a separate 2256
vendor's license from the county auditor in that county. Upon 2257
the commissioner's determination that an applicant is a 2258
transient vendor, the applicant shall pay a license fee in the 2259
amount of twenty-five dollars, at which time the tax 2260
commissioner shall issue the license. The tax commissioner may 2261
require a vendor to be licensed as a transient vendor if, in the 2262
opinion of the commissioner, such licensing is necessary for the 2263
efficient administration of the tax. 2264

Any holder of a valid transient vendor's license may make 2265
retail sales at a temporary place of business or temporary 2266
exhibition, show, fair, flea market, or similar event, held 2267
anywhere in the state without complying with any provision of 2268
section 311.37 of the Revised Code. Any holder of a valid 2269
vendor's license may make retail sales as a transient vendor at 2270
a temporary place of business or temporary exhibition, show, 2271
fair, flea market, or similar event held in any county in which 2272

the vendor maintains a fixed place of business for which the 2273
vendor holds a vendor's license without obtaining a transient 2274
vendor's license. 2275

(E) Any vendor who is issued a license pursuant to this 2276
section shall display the license or a copy of it prominently, 2277
in plain view, at every place of business of the vendor. 2278

(F) No owner, organizer, or promoter who operates a fair, 2279
flea market, show, exhibition, convention, or similar event at 2280
which transient vendors are present shall fail to keep a 2281
comprehensive record of all such vendors, listing the vendor's 2282
name, permanent address, vendor's license number, and the type 2283
of goods sold. Such records shall be kept for four years and 2284
shall be open to inspection by the commissioner. 2285

(G) The commissioner may issue additional types of 2286
licenses if required to efficiently administer the tax imposed 2287
by this chapter. 2288

(H) A vendor shall post in a conspicuous manner at all 2289
points of sale on the vendor's premises where firearms are sold 2290
a notice that says the following: "The State of Ohio has 2291
exempted the sale of firearm safety devices from the sales and 2292
use tax imposed by this state and local governments." The 2293
vendor, upon the retail sale or transfer of a firearm, shall 2294
furnish such a written notice to the consumer. 2295

Section 2. That existing sections 5739.01, 5739.02, 2296
5739.03, and 5739.17 of the Revised Code are hereby repealed. 2297

Section 3. The amendment by this act of sections 5739.01, 2298
5739.02, 5739.03, and 5739.17 of the Revised Code applies on and 2299
after the first day of the first month beginning after the 2300
effective date of this section. 2301