

As Introduced

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S. B. No. 216

Senators Burke, Gardner

Cosponsors: Senators Eklund, Hughes, Seitz

A BILL

To amend sections 5739.01 and 5741.01 of the 1
Revised Code to exempt the first \$500 of 2
prescription eyeglasses, contact lenses, and 3
other optical aids sold by licensed dispensers 4
from sales and use tax. 5

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

Section 1. That sections 5739.01 and 5741.01 of the 6
Revised Code be amended to read as follows: 7

Sec. 5739.01. As used in this chapter: 8

(A) "Person" includes individuals, receivers, assignees, 9
trustees in bankruptcy, estates, firms, partnerships, 10
associations, joint-stock companies, joint ventures, clubs, 11
societies, corporations, the state and its political 12
subdivisions, and combinations of individuals of any form. 13

(B) "Sale" and "selling" include all of the following 14
transactions for a consideration in any manner, whether 15
absolutely or conditionally, whether for a price or rental, in 16
money or by exchange, and by any means whatsoever: 17

(1) All transactions by which title or possession, or 18
both, of tangible personal property, is or is to be transferred, 19
or a license to use or consume tangible personal property is or 20
is to be granted; 21

(2) All transactions by which lodging by a hotel is or is 22
to be furnished to transient guests; 23

(3) All transactions by which: 24

(a) An item of tangible personal property is or is to be 25
repaired, except property, the purchase of which would not be 26
subject to the tax imposed by section 5739.02 of the Revised 27
Code; 28

(b) An item of tangible personal property is or is to be 29
installed, except property, the purchase of which would not be 30
subject to the tax imposed by section 5739.02 of the Revised 31
Code or property that is or is to be incorporated into and will 32
become a part of a production, transmission, transportation, or 33
distribution system for the delivery of a public utility 34
service; 35

(c) The service of washing, cleaning, waxing, polishing, 36
or painting a motor vehicle is or is to be furnished; 37

(d) Until August 1, 2003, industrial laundry cleaning 38
services are or are to be provided and, on and after August 1, 39
2003, laundry and dry cleaning services are or are to be 40
provided; 41

(e) Automatic data processing, computer services, or 42
electronic information services are or are to be provided for 43
use in business when the true object of the transaction is the 44
receipt by the consumer of automatic data processing, computer 45
services, or electronic information services rather than the 46

receipt of personal or professional services to which automatic 47
data processing, computer services, or electronic information 48
services are incidental or supplemental. Notwithstanding any 49
other provision of this chapter, such transactions that occur 50
between members of an affiliated group are not sales. An 51
"affiliated group" means two or more persons related in such a 52
way that one person owns or controls the business operation of 53
another member of the group. In the case of corporations with 54
stock, one corporation owns or controls another if it owns more 55
than fifty per cent of the other corporation's common stock with 56
voting rights. 57

(f) Telecommunications service, including prepaid calling 58
service, prepaid wireless calling service, or ancillary service, 59
is or is to be provided, but not including coin-operated 60
telephone service; 61

(g) Landscaping and lawn care service is or is to be 62
provided; 63

(h) Private investigation and security service is or is to 64
be provided; 65

(i) Information services or tangible personal property is 66
provided or ordered by means of a nine hundred telephone call; 67

(j) Building maintenance and janitorial service is or is 68
to be provided; 69

(k) Employment service is or is to be provided; 70

(l) Employment placement service is or is to be provided; 71

(m) Exterminating service is or is to be provided; 72

(n) Physical fitness facility service is or is to be 73
provided; 74

(o) Recreation and sports club service is or is to be provided;	75 76
(p) On and after August 1, 2003, satellite broadcasting service is or is to be provided;	77 78
(q) On and after August 1, 2003, 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.	79 80 81 82 83 84 85 86 87
(r) On and after August 1, 2003, 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;	88 89 90 91 92 93 94 95
(s) On and after August 1, 2003, 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.	96 97 98 99
(t) On and after August 1, 2003, 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	100 101 102 103

has less than five thousand dollars in sales of such service 104
during the calendar year. 105

(u) Electronic publishing service is or is to be provided 106
to a consumer for use in business, except that such transactions 107
occurring between members of an affiliated group, as defined in 108
division (B) (3) (e) of this section, are not sales. 109

(4) All transactions by which printed, imprinted, 110
overprinted, lithographic, multilithic, blueprinted, 111
photostatic, or other productions or reproductions of written or 112
graphic matter are or are to be furnished or transferred; 113

(5) The production or fabrication of tangible personal 114
property for a consideration for consumers who furnish either 115
directly or indirectly the materials used in the production of 116
fabrication work; and include the furnishing, preparing, or 117
serving for a consideration of any tangible personal property 118
consumed on the premises of the person furnishing, preparing, or 119
serving such tangible personal property. Except as provided in 120
section 5739.03 of the Revised Code, a construction contract 121
pursuant to which tangible personal property is or is to be 122
incorporated into a structure or improvement on and becoming a 123
part of real property is not a sale of such tangible personal 124
property. The construction contractor is the consumer of such 125
tangible personal property, provided that the sale and 126
installation of carpeting, the sale and installation of 127
agricultural land tile, the sale and erection or installation of 128
portable grain bins, or the provision of landscaping and lawn 129
care service and the transfer of property as part of such 130
service is never a construction contract. 131

As used in division (B) (5) of this section: 132

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

(b) "Portable grain bin" means a structure that is used or to be used by a person engaged in farming or agriculture to shelter the person's grain and that is designed to be disassembled without significant damage to its component parts.

(6) All transactions in which all of the shares of stock of a closely held corporation are transferred, or an ownership interest in a pass-through entity, as defined in section 5733.04 of the Revised Code, is transferred, if the corporation or pass-through entity is not engaging in business and its entire assets consist of boats, planes, motor vehicles, or other tangible personal property operated primarily for the use and enjoyment of the shareholders or owners;

(7) All transactions in which a warranty, maintenance or service contract, or similar agreement by which the vendor of the warranty, contract, or agreement agrees to repair or maintain the tangible personal property of the consumer is or is to be provided;

(8) The transfer of copyrighted motion picture films used solely for advertising purposes, except that the transfer of such films for exhibition purposes is not a sale;

(9) On and after August 1, 2003, all transactions by which 162
tangible personal property is or is to be stored, except such 163
property that the consumer of the storage holds for sale in the 164
regular course of business; 165

(10) All transactions in which "guaranteed auto 166
protection" is provided whereby a person promises to pay to the 167
consumer the difference between the amount the consumer receives 168
from motor vehicle insurance and the amount the consumer owes to 169
a person holding title to or a lien on the consumer's motor 170
vehicle in the event the consumer's motor vehicle suffers a 171
total loss under the terms of the motor vehicle insurance policy 172
or is stolen and not recovered, if the protection and its price 173
are included in the purchase or lease agreement; 174

(11) (a) Except as provided in division (B) (11) (b) of this 175
section, on and after October 1, 2009, all transactions by which 176
health care services are paid for, reimbursed, provided, 177
delivered, arranged for, or otherwise made available by a 178
medicaid health insuring corporation pursuant to the 179
corporation's contract with the state. 180

(b) If the centers for medicare and medicaid services of 181
the United States department of health and human services 182
determines that the taxation of transactions described in 183
division (B) (11) (a) of this section constitutes an impermissible 184
health care-related tax under the "Social Security Act," section 185
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 186
the medicaid director shall notify the tax commissioner of that 187
determination. Beginning with the first day of the month 188
following that notification, the transactions described in 189
division (B) (11) (a) of this section are not sales for the 190
purposes of this chapter or Chapter 5741. of the Revised Code. 191

The tax commissioner shall order that the collection of taxes 192
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 193
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 194
for transactions occurring on or after that date. 195

(12) All transactions by which a specified digital product 196
is provided for permanent use or less than permanent use, 197
regardless of whether continued payment is required. 198

Except as provided in this section, "sale" and "selling" 199
do not include transfers of interest in leased property where 200
the original lessee and the terms of the original lease 201
agreement remain unchanged, or professional, insurance, or 202
personal service transactions that involve the transfer of 203
tangible personal property as an inconsequential element, for 204
which no separate charges are made. 205

(C) "Vendor" means the person providing the service or by 206
whom the transfer effected or license given by a sale is or is 207
to be made or given and, for sales described in division (B)(3) 208
(i) of this section, the telecommunications service vendor that 209
provides the nine hundred telephone service; if two or more 210
persons are engaged in business at the same place of business 211
under a single trade name in which all collections on account of 212
sales by each are made, such persons shall constitute a single 213
vendor. 214

Physicians, dentists, hospitals, and veterinarians who are 215
engaged in selling tangible personal property as received from 216
others, such as eyeglasses, mouthwashes, dentifrices, or similar 217
articles, are vendors. Veterinarians who are engaged in 218
transferring to others for a consideration drugs, the dispensing 219
of which does not require an order of a licensed veterinarian or 220
physician under federal law, are vendors. 221

(D) (1) "Consumer" means the person for whom the service is 222
provided, to whom the transfer effected or license given by a 223
sale is or is to be made or given, to whom the service described 224
in division (B) (3) (f) or (i) of this section is charged, or to 225
whom the admission is granted. 226

(2) Physicians, dentists, hospitals, and blood banks 227
operated by nonprofit institutions and persons licensed to 228
practice veterinary medicine, surgery, and dentistry are 229
consumers of all tangible personal property and services 230
purchased by them in connection with the practice of medicine, 231
dentistry, the rendition of hospital or blood bank service, or 232
the practice of veterinary medicine, surgery, and dentistry. In 233
addition to being consumers of drugs administered by them or by 234
their assistants according to their direction, veterinarians 235
also are consumers of drugs that under federal law may be 236
dispensed only by or upon the order of a licensed veterinarian 237
or physician, when transferred by them to others for a 238
consideration to provide treatment to animals as directed by the 239
veterinarian. 240

(3) A person who performs a facility management, or 241
similar service contract for a contractee is a consumer of all 242
tangible personal property and services purchased for use in 243
connection with the performance of such contract, regardless of 244
whether title to any such property vests in the contractee. The 245
purchase of such property and services is not subject to the 246
exception for resale under division (E) (1) of this section. 247

(4) (a) In the case of a person who purchases printed 248
matter for the purpose of distributing it or having it 249
distributed to the public or to a designated segment of the 250
public, free of charge, that person is the consumer of that 251

printed matter, and the purchase of that printed matter for that purpose is a sale. 252
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(b) In the case of a person who produces, rather than purchases, printed matter for the purpose of distributing it or having it distributed to the public or to a designated segment of the public, free of charge, that person is the consumer of all tangible personal property and services purchased for use or consumption in the production of that printed matter. That person is not entitled to claim exemption under division (B) (42) (f) of section 5739.02 of the Revised Code for any material incorporated into the printed matter or any equipment, supplies, or services primarily used to produce the printed matter. 254
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(c) The distribution of printed matter to the public or to a designated segment of the public, free of charge, is not a sale to the members of the public to whom the printed matter is distributed or to any persons who purchase space in the printed matter for advertising or other purposes. 264
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(5) A person who makes sales of any of the services listed in division (B) (3) of this section is the consumer of any tangible personal property used in performing the service. The purchase of that property is not subject to the resale exception under division (E) (1) of this section. 269
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(6) A person who engages in highway transportation for hire is the consumer of all packaging materials purchased by that person and used in performing the service, except for packaging materials sold by such person in a transaction separate from the service. 274
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(7) In the case of a transaction for health care services under division (B) (11) of this section, a medicaid health 279
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insuring corporation is the consumer of such services. The 281
purchase of such services by a medicaid health insuring 282
corporation is not subject to the exception for resale under 283
division (E) (1) of this section or to the exemptions provided 284
under divisions (B) (12), (18), (19), and (22) of section 5739.02 285
of the Revised Code. 286

(E) "Retail sale" and "sales at retail" include all sales, 287
except those in which the purpose of the consumer is to resell 288
the thing transferred or benefit of the service provided, by a 289
person engaging in business, in the form in which the same is, 290
or is to be, received by the person. 291

(F) "Business" includes any activity engaged in by any 292
person with the object of gain, benefit, or advantage, either 293
direct or indirect. "Business" does not include the activity of 294
a person in managing and investing the person's own funds. 295

(G) "Engaging in business" means commencing, conducting, 296
or continuing in business, and liquidating a business when the 297
liquidator thereof holds itself out to the public as conducting 298
such business. Making a casual sale is not engaging in business. 299

(H) (1) (a) "Price," except as provided in divisions (H) (2), 300
(3), ~~and (4)~~, and (5) of this section, means the total amount of 301
consideration, including cash, credit, property, and services, 302
for which tangible personal property or services are sold, 303
leased, or rented, valued in money, whether received in money or 304
otherwise, without any deduction for any of the following: 305

(i) The vendor's cost of the property sold; 306

(ii) The cost of materials used, labor or service costs, 307
interest, losses, all costs of transportation to the vendor, all 308
taxes imposed on the vendor, including the tax imposed under 309

Chapter 5751. of the Revised Code, and any other expense of the	310
vendor;	311
(iii) Charges by the vendor for any services necessary to	312
complete the sale;	313
(iv) On and after August 1, 2003, delivery charges. As	314
used in this division, "delivery charges" means charges by the	315
vendor for preparation and delivery to a location designated by	316
the consumer of tangible personal property or a service,	317
including transportation, shipping, postage, handling, crating,	318
and packing.	319
(v) Installation charges;	320
(vi) Credit for any trade-in.	321
(b) "Price" includes consideration received by the vendor	322
from a third party, if the vendor actually receives the	323
consideration from a party other than the consumer, and the	324
consideration is directly related to a price reduction or	325
discount on the sale; the vendor has an obligation to pass the	326
price reduction or discount through to the consumer; the amount	327
of the consideration attributable to the sale is fixed and	328
determinable by the vendor at the time of the sale of the item	329
to the consumer; and one of the following criteria is met:	330
(i) The consumer presents a coupon, certificate, or other	331
document to the vendor to claim a price reduction or discount	332
where the coupon, certificate, or document is authorized,	333
distributed, or granted by a third party with the understanding	334
that the third party will reimburse any vendor to whom the	335
coupon, certificate, or document is presented;	336
(ii) The consumer identifies the consumer's self to the	337
seller as a member of a group or organization entitled to a	338

price reduction or discount. A preferred customer card that is 339
available to any patron does not constitute membership in such a 340
group or organization. 341

(iii) The price reduction or discount is identified as a 342
third party price reduction or discount on the invoice received 343
by the consumer, or on a coupon, certificate, or other document 344
presented by the consumer. 345

(c) "Price" does not include any of the following: 346

(i) Discounts, including cash, term, or coupons that are 347
not reimbursed by a third party that are allowed by a vendor and 348
taken by a consumer on a sale; 349

(ii) Interest, financing, and carrying charges from credit 350
extended on the sale of tangible personal property or services, 351
if the amount is separately stated on the invoice, bill of sale, 352
or similar document given to the purchaser; 353

(iii) Any taxes legally imposed directly on the consumer 354
that are separately stated on the invoice, bill of sale, or 355
similar document given to the consumer. For the purpose of this 356
division, the tax imposed under Chapter 5751. of the Revised 357
Code is not a tax directly on the consumer, even if the tax or a 358
portion thereof is separately stated. 359

(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of 360
this section, any discount allowed by an automobile manufacturer 361
to its employee, or to the employee of a supplier, on the 362
purchase of a new motor vehicle from a new motor vehicle dealer 363
in this state. 364

(v) The dollar value of a gift card that is not sold by a 365
vendor or purchased by a consumer and that is redeemed by the 366
consumer in purchasing tangible personal property or services if 367

the vendor is not reimbursed and does not receive compensation 368
from a third party to cover all or part of the gift card value. 369
For the purposes of this division, a gift card is not sold by a 370
vendor or purchased by a consumer if it is distributed pursuant 371
to an awards, loyalty, or promotional program. Past and present 372
purchases of tangible personal property or services by the 373
consumer shall not be treated as consideration exchanged for a 374
gift card. 375

(2) In the case of a sale of any new motor vehicle by a 376
new motor vehicle dealer, as defined in section 4517.01 of the 377
Revised Code, in which another motor vehicle is accepted by the 378
dealer as part of the consideration received, "price" has the 379
same meaning as in division (H)(1) of this section, reduced by 380
the credit afforded the consumer by the dealer for the motor 381
vehicle received in trade. 382

(3) In the case of a sale of any watercraft or outboard 383
motor by a watercraft dealer licensed in accordance with section 384
1547.543 of the Revised Code, in which another watercraft, 385
watercraft and trailer, or outboard motor is accepted by the 386
dealer as part of the consideration received, "price" has the 387
same meaning as in division (H)(1) of this section, reduced by 388
the credit afforded the consumer by the dealer for the 389
watercraft, watercraft and trailer, or outboard motor received 390
in trade. As used in this division, "watercraft" includes an 391
outdrive unit attached to the watercraft. 392

(4) In the case of transactions for health care services 393
under division (B)(11) of this section, "price" means the amount 394
of managed care premiums received each month by a medicaid 395
health insuring corporation. 396

(5) In the case of a sale of optical aids or components 397

thereof by an eligible vendor as received by the eligible vendor 398
from others, "price" has the same meaning as in division (H) (1) 399
of this section, reduced by five hundred dollars per optical aid 400
or component. If the price computed under division (H) (5) of 401
this section is less than zero, the price shall equal zero. 402

As used in division (H) (5) of this section, "optical aid" 403
means spectacles, contact lenses, or other instruments or 404
devices that may aid or correct human vision and have been 405
prescribed by a physician or optometrist licensed by any state. 406
"Eligible vendor" means a vendor licensed under Chapter 4725. or 407
4731. of the Revised Code or otherwise authorized to dispense 408
optical aids or components under the laws of another state, 409
country, or province. 410

(I) "Receipts" means the total amount of the prices of the 411
sales of vendors, provided that the dollar value of gift cards 412
distributed pursuant to an awards, loyalty, or promotional 413
program, and cash discounts allowed and taken on sales at the 414
time they are consummated are not included, minus any amount 415
deducted as a bad debt pursuant to section 5739.121 of the 416
Revised Code. "Receipts" does not include the sale price of 417
property returned or services rejected by consumers when the 418
full sale price and tax are refunded either in cash or by 419
credit. 420

(J) "Place of business" means any location at which a 421
person engages in business. 422

(K) "Premises" includes any real property or portion 423
thereof upon which any person engages in selling tangible 424
personal property at retail or making retail sales and also 425
includes any real property or portion thereof designated for, or 426
devoted to, use in conjunction with the business engaged in by 427

such person. 428

(L) "Casual sale" means a sale of an item of tangible 429
personal property that was obtained by the person making the 430
sale, through purchase or otherwise, for the person's own use 431
and was previously subject to any state's taxing jurisdiction on 432
its sale or use, and includes such items acquired for the 433
seller's use that are sold by an auctioneer employed directly by 434
the person for such purpose, provided the location of such sales 435
is not the auctioneer's permanent place of business. As used in 436
this division, "permanent place of business" includes any 437
location where such auctioneer has conducted more than two 438
auctions during the year. 439

(M) "Hotel" means every establishment kept, used, 440
maintained, advertised, or held out to the public to be a place 441
where sleeping accommodations are offered to guests, in which 442
five or more rooms are used for the accommodation of such 443
guests, whether the rooms are in one or several structures, 444
except as otherwise provided in division (G) of section 5739.09 445
of the Revised Code. 446

(N) "Transient guests" means persons occupying a room or 447
rooms for sleeping accommodations for less than thirty 448
consecutive days. 449

(O) "Making retail sales" means the effecting of 450
transactions wherein one party is obligated to pay the price and 451
the other party is obligated to provide a service or to transfer 452
title to or possession of the item sold. "Making retail sales" 453
does not include the preliminary acts of promoting or soliciting 454
the retail sales, other than the distribution of printed matter 455
which displays or describes and prices the item offered for 456
sale, nor does it include delivery of a predetermined quantity 457

of tangible personal property or transportation of property or 458
personnel to or from a place where a service is performed. 459

(P) "Used directly in the rendition of a public utility 460
service" means that property that is to be incorporated into and 461
will become a part of the consumer's production, transmission, 462
transportation, or distribution system and that retains its 463
classification as tangible personal property after such 464
incorporation; fuel or power used in the production, 465
transmission, transportation, or distribution system; and 466
tangible personal property used in the repair and maintenance of 467
the production, transmission, transportation, or distribution 468
system, including only such motor vehicles as are specially 469
designed and equipped for such use. Tangible personal property 470
and services used primarily in providing highway transportation 471
for hire are not used directly in the rendition of a public 472
utility service. In this definition, "public utility" includes a 473
citizen of the United States holding, and required to hold, a 474
certificate of public convenience and necessity issued under 49 475
U.S.C. 41102. 476

(Q) "Refining" means removing or separating a desirable 477
product from raw or contaminated materials by distillation or 478
physical, mechanical, or chemical processes. 479

(R) "Assembly" and "assembling" mean attaching or fitting 480
together parts to form a product, but do not include packaging a 481
product. 482

(S) "Manufacturing operation" means a process in which 483
materials are changed, converted, or transformed into a 484
different state or form from which they previously existed and 485
includes refining materials, assembling parts, and preparing raw 486
materials and parts by mixing, measuring, blending, or otherwise 487

committing such materials or parts to the manufacturing process. 488

"Manufacturing operation" does not include packaging. 489

(T) "Fiscal officer" means, with respect to a regional 490
transit authority, the secretary-treasurer thereof, and with 491
respect to a county that is a transit authority, the fiscal 492
officer of the county transit board if one is appointed pursuant 493
to section 306.03 of the Revised Code or the county auditor if 494
the board of county commissioners operates the county transit 495
system. 496

(U) "Transit authority" means a regional transit authority 497
created pursuant to section 306.31 of the Revised Code or a 498
county in which a county transit system is created pursuant to 499
section 306.01 of the Revised Code. For the purposes of this 500
chapter, a transit authority must extend to at least the entire 501
area of a single county. A transit authority that includes 502
territory in more than one county must include all the area of 503
the most populous county that is a part of such transit 504
authority. County population shall be measured by the most 505
recent census taken by the United States census bureau. 506

(V) "Legislative authority" means, with respect to a 507
regional transit authority, the board of trustees thereof, and 508
with respect to a county that is a transit authority, the board 509
of county commissioners. 510

(W) "Territory of the transit authority" means all of the 511
area included within the territorial boundaries of a transit 512
authority as they from time to time exist. Such territorial 513
boundaries must at all times include all the area of a single 514
county or all the area of the most populous county that is a 515
part of such transit authority. County population shall be 516
measured by the most recent census taken by the United States 517

census bureau.	518
(X) "Providing a service" means providing or furnishing anything described in division (B) (3) of this section for consideration.	519 520 521
(Y) (1) (a) "Automatic data processing" means processing of others' data, including keypunching or similar data entry services together with verification thereof, or providing access to computer equipment for the purpose of processing data.	522 523 524 525
(b) "Computer services" means providing services consisting of specifying computer hardware configurations and evaluating technical processing characteristics, computer programming, and training of computer programmers and operators, provided in conjunction with and to support the sale, lease, or operation of taxable computer equipment or systems.	526 527 528 529 530 531
(c) "Electronic information services" means providing access to computer equipment by means of telecommunications equipment for the purpose of either of the following:	532 533 534
(i) Examining or acquiring data stored in or accessible to the computer equipment;	535 536
(ii) Placing data into the computer equipment to be retrieved by designated recipients with access to the computer equipment.	537 538 539
For transactions occurring on or after the effective date of the amendment of this section by H.B. 157 of the 127th general assembly, December 21, 2007, "electronic information services" does not include electronic publishing as defined in division (LLL) of this section.	540 541 542 543 544
(d) "Automatic data processing, computer services, or	545

electronic information services" shall not include personal or 546
professional services. 547

(2) As used in divisions (B) (3) (e) and (Y) (1) of this 548
section, "personal and professional services" means all services 549
other than automatic data processing, computer services, or 550
electronic information services, including but not limited to: 551

(a) Accounting and legal services such as advice on tax 552
matters, asset management, budgetary matters, quality control, 553
information security, and auditing and any other situation where 554
the service provider receives data or information and studies, 555
alters, analyzes, interprets, or adjusts such material; 556

(b) Analyzing business policies and procedures; 557

(c) Identifying management information needs; 558

(d) Feasibility studies, including economic and technical 559
analysis of existing or potential computer hardware or software 560
needs and alternatives; 561

(e) Designing policies, procedures, and custom software 562
for collecting business information, and determining how data 563
should be summarized, sequenced, formatted, processed, 564
controlled, and reported so that it will be meaningful to 565
management; 566

(f) Developing policies and procedures that document how 567
business events and transactions are to be authorized, executed, 568
and controlled; 569

(g) Testing of business procedures; 570

(h) Training personnel in business procedure applications; 571

(i) Providing credit information to users of such 572

information by a consumer reporting agency, as defined in the 573
"Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 574
U.S.C. 1681a(f), or as hereafter amended, including but not 575
limited to gathering, organizing, analyzing, recording, and 576
furnishing such information by any oral, written, graphic, or 577
electronic medium; 578

(j) Providing debt collection services by any oral, 579
written, graphic, or electronic means. 580

The services listed in divisions (Y) (2) (a) to (j) of this 581
section are not automatic data processing or computer services. 582

(Z) "Highway transportation for hire" means the 583
transportation of personal property belonging to others for 584
consideration by any of the following: 585

(1) The holder of a permit or certificate issued by this 586
state or the United States authorizing the holder to engage in 587
transportation of personal property belonging to others for 588
consideration over or on highways, roadways, streets, or any 589
similar public thoroughfare; 590

(2) A person who engages in the transportation of personal 591
property belonging to others for consideration over or on 592
highways, roadways, streets, or any similar public thoroughfare 593
but who could not have engaged in such transportation on 594
December 11, 1985, unless the person was the holder of a permit 595
or certificate of the types described in division (Z) (1) of this 596
section; 597

(3) A person who leases a motor vehicle to and operates it 598
for a person described by division (Z) (1) or (2) of this 599
section. 600

(AA) (1) "Telecommunications service" means the electronic 601

transmission, conveyance, or routing of voice, data, audio, 602
video, or any other information or signals to a point, or 603
between or among points. "Telecommunications service" includes 604
such transmission, conveyance, or routing in which computer 605
processing applications are used to act on the form, code, or 606
protocol of the content for purposes of transmission, 607
conveyance, or routing without regard to whether the service is 608
referred to as voice-over internet protocol service or is 609
classified by the federal communications commission as enhanced 610
or value-added. "Telecommunications service" does not include 611
any of the following: 612

(a) Data processing and information services that allow 613
data to be generated, acquired, stored, processed, or retrieved 614
and delivered by an electronic transmission to a consumer where 615
the consumer's primary purpose for the underlying transaction is 616
the processed data or information; 617

(b) Installation or maintenance of wiring or equipment on 618
a customer's premises; 619

(c) Tangible personal property; 620

(d) Advertising, including directory advertising; 621

(e) Billing and collection services provided to third 622
parties; 623

(f) Internet access service; 624

(g) Radio and television audio and video programming 625
services, regardless of the medium, including the furnishing of 626
transmission, conveyance, and routing of such services by the 627
programming service provider. Radio and television audio and 628
video programming services include, but are not limited to, 629
cable service, as defined in 47 U.S.C. 522(6), and audio and 630

video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. 20.3; 631
632

(h) Ancillary service; 633

(i) Digital products delivered electronically, including software, music, video, reading materials, or ring tones. 634
635

(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: 636
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(a) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call, including providing a telephone number. 642
643
644
"Conference bridging service" does not include 645
telecommunications services used to reach the conference bridge. 646

(b) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement. 647
648
649

(c) "Directory assistance" means an ancillary service of providing telephone number or address information. 650
651

(d) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including conference bridging service. 652
653
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(e) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded 657
658

messages. "Voice mail service" does not include any vertical 659
services that the customer may be required to have in order to 660
utilize the voice mail service. 661

(3) "900 service" means an inbound toll telecommunications 662
service purchased by a subscriber that allows the subscriber's 663
customers to call in to the subscriber's prerecorded 664
announcement or live service, and which is typically marketed 665
under the name "900 service" and any subsequent numbers 666
designated by the federal communications commission. "900 667
service" does not include the charge for collection services 668
provided by the seller of the telecommunications service to the 669
subscriber, or services or products sold by the subscriber to 670
the subscriber's customer. 671

(4) "Prepaid calling service" means the right to access 672
exclusively telecommunications services, which must be paid for 673
in advance and which enables the origination of calls using an 674
access number or authorization code, whether manually or 675
electronically dialed, and that is sold in predetermined units 676
or dollars of which the number declines with use in a known 677
amount. 678

(5) "Prepaid wireless calling service" means a 679
telecommunications service that provides the right to utilize 680
mobile telecommunications service as well as other non- 681
telecommunications services, including the download of digital 682
products delivered electronically, and content and ancillary 683
services, that must be paid for in advance and that is sold in 684
predetermined units or dollars of which the number declines with 685
use in a known amount. 686

(6) "Value-added non-voice data service" means a 687
telecommunications service in which computer processing 688

applications are used to act on the form, content, code, or 689
protocol of the information or data primarily for a purpose 690
other than transmission, conveyance, or routing. 691

(7) "Coin-operated telephone service" means a 692
telecommunications service paid for by inserting money into a 693
telephone accepting direct deposits of money to operate. 694

(8) "Customer" has the same meaning as in section 5739.034 695
of the Revised Code. 696

(BB) "Laundry and dry cleaning services" means removing 697
soil or dirt from towels, linens, articles of clothing, or other 698
fabric items that belong to others and supplying towels, linens, 699
articles of clothing, or other fabric items. "Laundry and dry 700
cleaning services" does not include the provision of self- 701
service facilities for use by consumers to remove soil or dirt 702
from towels, linens, articles of clothing, or other fabric 703
items. 704

(CC) "Magazines distributed as controlled circulation 705
publications" means magazines containing at least twenty-four 706
pages, at least twenty-five per cent editorial content, issued 707
at regular intervals four or more times a year, and circulated 708
without charge to the recipient, provided that such magazines 709
are not owned or controlled by individuals or business concerns 710
which conduct such publications as an auxiliary to, and 711
essentially for the advancement of the main business or calling 712
of, those who own or control them. 713

(DD) "Landscaping and lawn care service" means the 714
services of planting, seeding, sodding, removing, cutting, 715
trimming, pruning, mulching, aerating, applying chemicals, 716
watering, fertilizing, and providing similar services to 717

establish, promote, or control the growth of trees, shrubs, 718
flowers, grass, ground cover, and other flora, or otherwise 719
maintaining a lawn or landscape grown or maintained by the owner 720
for ornamentation or other nonagricultural purpose. However, 721
"landscaping and lawn care service" does not include the 722
providing of such services by a person who has less than five 723
thousand dollars in sales of such services during the calendar 724
year. 725

(EE) "Private investigation and security service" means 726
the performance of any activity for which the provider of such 727
service is required to be licensed pursuant to Chapter 4749. of 728
the Revised Code, or would be required to be so licensed in 729
performing such services in this state, and also includes the 730
services of conducting polygraph examinations and of monitoring 731
or overseeing the activities on or in, or the condition of, the 732
consumer's home, business, or other facility by means of 733
electronic or similar monitoring devices. "Private investigation 734
and security service" does not include special duty services 735
provided by off-duty police officers, deputy sheriffs, and other 736
peace officers regularly employed by the state or a political 737
subdivision. 738

(FF) "Information services" means providing conversation, 739
giving consultation or advice, playing or making a voice or 740
other recording, making or keeping a record of the number of 741
callers, and any other service provided to a consumer by means 742
of a nine hundred telephone call, except when the nine hundred 743
telephone call is the means by which the consumer makes a 744
contribution to a recognized charity. 745

(GG) "Research and development" means designing, creating, 746
or formulating new or enhanced products, equipment, or 747

manufacturing processes, and also means conducting scientific or 748
technological inquiry and experimentation in the physical 749
sciences with the goal of increasing scientific knowledge which 750
may reveal the bases for new or enhanced products, equipment, or 751
manufacturing processes. 752

(HH) "Qualified research and development equipment" means 753
capitalized tangible personal property, and leased personal 754
property that would be capitalized if purchased, used by a 755
person primarily to perform research and development. Tangible 756
personal property primarily used in testing, as defined in 757
division (A)(4) of section 5739.011 of the Revised Code, or used 758
for recording or storing test results, is not qualified research 759
and development equipment unless such property is primarily used 760
by the consumer in testing the product, equipment, or 761
manufacturing process being created, designed, or formulated by 762
the consumer in the research and development activity or in 763
recording or storing such test results. 764

(II) "Building maintenance and janitorial service" means 765
cleaning the interior or exterior of a building and any tangible 766
personal property located therein or thereon, including any 767
services incidental to such cleaning for which no separate 768
charge is made. However, "building maintenance and janitorial 769
service" does not include the providing of such service by a 770
person who has less than five thousand dollars in sales of such 771
service during the calendar year. As used in this division, 772
"cleaning" does not include sanitation services necessary for an 773
establishment described in 21 U.S.C. 608 to comply with rules 774
and regulations adopted pursuant to that section. 775

(JJ) "Employment service" means providing or supplying 776
personnel, on a temporary or long-term basis, to perform work or 777

labor under the supervision or control of another, when the 778
personnel so provided or supplied receive their wages, salary, 779
or other compensation from the provider or supplier of the 780
employment service or from a third party that provided or 781
supplied the personnel to the provider or supplier. "Employment 782
service" does not include: 783

(1) Acting as a contractor or subcontractor, where the 784
personnel performing the work are not under the direct control 785
of the purchaser. 786

(2) Medical and health care services. 787

(3) Supplying personnel to a purchaser pursuant to a 788
contract of at least one year between the service provider and 789
the purchaser that specifies that each employee covered under 790
the contract is assigned to the purchaser on a permanent basis. 791

(4) Transactions between members of an affiliated group, 792
as defined in division (B) (3) (e) of this section. 793

(5) Transactions where the personnel so provided or 794
supplied by a provider or supplier to a purchaser of an 795
employment service are then provided or supplied by that 796
purchaser to a third party as an employment service, except 797
"employment service" does include the transaction between that 798
purchaser and the third party. 799

(KK) "Employment placement service" means locating or 800
finding employment for a person or finding or locating an 801
employee to fill an available position. 802

(LL) "Exterminating service" means eradicating or 803
attempting to eradicate vermin infestations from a building or 804
structure, or the area surrounding a building or structure, and 805
includes activities to inspect, detect, or prevent vermin 806

infestation of a building or structure. 807

(MM) "Physical fitness facility service" means all 808
transactions by which a membership is granted, maintained, or 809
renewed, including initiation fees, membership dues, renewal 810
fees, monthly minimum fees, and other similar fees and dues, by 811
a physical fitness facility such as an athletic club, health 812
spa, or gymnasium, which entitles the member to use the facility 813
for physical exercise. 814

(NN) "Recreation and sports club service" means all 815
transactions by which a membership is granted, maintained, or 816
renewed, including initiation fees, membership dues, renewal 817
fees, monthly minimum fees, and other similar fees and dues, by 818
a recreation and sports club, which entitles the member to use 819
the facilities of the organization. "Recreation and sports club" 820
means an organization that has ownership of, or controls or 821
leases on a continuing, long-term basis, the facilities used by 822
its members and includes an aviation club, gun or shooting club, 823
yacht club, card club, swimming club, tennis club, golf club, 824
country club, riding club, amateur sports club, or similar 825
organization. 826

(OO) "Livestock" means farm animals commonly raised for 827
food, food production, or other agricultural purposes, 828
including, but not limited to, cattle, sheep, goats, swine, 829
poultry, and captive deer. "Livestock" does not include 830
invertebrates, amphibians, reptiles, domestic pets, animals for 831
use in laboratories or for exhibition, or other animals not 832
commonly raised for food or food production. 833

(PP) "Livestock structure" means a building or structure 834
used exclusively for the housing, raising, feeding, or 835
sheltering of livestock, and includes feed storage or handling 836

structures and structures for livestock waste handling. 837

(QQ) "Horticulture" means the growing, cultivation, and 838
production of flowers, fruits, herbs, vegetables, sod, 839
mushrooms, and nursery stock. As used in this division, "nursery 840
stock" has the same meaning as in section 927.51 of the Revised 841
Code. 842

(RR) "Horticulture structure" means a building or 843
structure used exclusively for the commercial growing, raising, 844
or overwintering of horticultural products, and includes the 845
area used for stocking, storing, and packing horticultural 846
products when done in conjunction with the production of those 847
products. 848

(SS) "Newspaper" means an unbound publication bearing a 849
title or name that is regularly published, at least as 850
frequently as biweekly, and distributed from a fixed place of 851
business to the public in a specific geographic area, and that 852
contains a substantial amount of news matter of international, 853
national, or local events of interest to the general public. 854

(TT) "Professional racing team" means a person that 855
employs at least twenty full-time employees for the purpose of 856
conducting a motor vehicle racing business for profit. The 857
person must conduct the business with the purpose of racing one 858
or more motor racing vehicles in at least ten competitive 859
professional racing events each year that comprise all or part 860
of a motor racing series sanctioned by one or more motor racing 861
sanctioning organizations. A "motor racing vehicle" means a 862
vehicle for which the chassis, engine, and parts are designed 863
exclusively for motor racing, and does not include a stock or 864
production model vehicle that may be modified for use in racing. 865
For the purposes of this division: 866

(1) A "competitive professional racing event" is a motor 867
vehicle racing event sanctioned by one or more motor racing 868
sanctioning organizations, at which aggregate cash prizes in 869
excess of eight hundred thousand dollars are awarded to the 870
competitors. 871

(2) "Full-time employee" means an individual who is 872
employed for consideration for thirty-five or more hours a week, 873
or who renders any other standard of service generally accepted 874
by custom or specified by contract as full-time employment. 875

(UU) (1) "Lease" or "rental" means any transfer of the 876
possession or control of tangible personal property for a fixed 877
or indefinite term, for consideration. "Lease" or "rental" 878
includes future options to purchase or extend, and agreements 879
described in 26 U.S.C. 7701(h) (1) covering motor vehicles and 880
trailers where the amount of consideration may be increased or 881
decreased by reference to the amount realized upon the sale or 882
disposition of the property. "Lease" or "rental" does not 883
include: 884

(a) A transfer of possession or control of tangible 885
personal property under a security agreement or a deferred 886
payment plan that requires the transfer of title upon completion 887
of the required payments; 888

(b) A transfer of possession or control of tangible 889
personal property under an agreement that requires the transfer 890
of title upon completion of required payments and payment of an 891
option price that does not exceed the greater of one hundred 892
dollars or one per cent of the total required payments; 893

(c) Providing tangible personal property along with an 894
operator for a fixed or indefinite period of time, if the 895

operator is necessary for the property to perform as designed. 896
For purposes of this division, the operator must do more than 897
maintain, inspect, or set up the tangible personal property. 898

(2) "Lease" and "rental," as defined in division (UU) of 899
this section, shall not apply to leases or rentals that exist 900
before June 26, 2003. 901

(3) "Lease" and "rental" have the same meaning as in 902
division (UU) (1) of this section regardless of whether a 903
transaction is characterized as a lease or rental under 904
generally accepted accounting principles, the Internal Revenue 905
Code, Title XIII of the Revised Code, or other federal, state, 906
or local laws. 907

(VV) "Mobile telecommunications service" has the same 908
meaning as in the "Mobile Telecommunications Sourcing Act," Pub. 909
L. No. 106-252, 114 Stat. 631 (2000), 4 U.S.C.A. 124(7), as 910
amended, and, on and after August 1, 2003, includes related fees 911
and ancillary services, including universal service fees, 912
detailed billing service, directory assistance, service 913
initiation, voice mail service, and vertical services, such as 914
caller ID and three-way calling. 915

(WW) "Certified service provider" has the same meaning as 916
in section 5740.01 of the Revised Code. 917

(XX) "Satellite broadcasting service" means the 918
distribution or broadcasting of programming or services by 919
satellite directly to the subscriber's receiving equipment 920
without the use of ground receiving or distribution equipment, 921
except the subscriber's receiving equipment or equipment used in 922
the uplink process to the satellite, and includes all service 923
and rental charges, premium channels or other special services, 924

installation and repair service charges, and any other charges 925
having any connection with the provision of the satellite 926
broadcasting service. 927

(YY) "Tangible personal property" means personal property 928
that can be seen, weighed, measured, felt, or touched, or that 929
is in any other manner perceptible to the senses. For purposes 930
of this chapter and Chapter 5741. of the Revised Code, "tangible 931
personal property" includes motor vehicles, electricity, water, 932
gas, steam, and prewritten computer software. 933

(ZZ) "Direct mail" means printed material delivered or 934
distributed by United States mail or other delivery service to a 935
mass audience or to addressees on a mailing list provided by the 936
consumer or at the direction of the consumer when the cost of 937
the items are not billed directly to the recipients. "Direct 938
mail" includes tangible personal property supplied directly or 939
indirectly by the consumer to the direct mail vendor for 940
inclusion in the package containing the printed material. 941
"Direct mail" does not include multiple items of printed 942
material delivered to a single address. 943

(AAA) "Computer" means an electronic device that accepts 944
information in digital or similar form and manipulates it for a 945
result based on a sequence of instructions. 946

(BBB) "Computer software" means a set of coded 947
instructions designed to cause a computer or automatic data 948
processing equipment to perform a task. 949

(CCC) "Delivered electronically" means delivery of 950
computer software from the seller to the purchaser by means 951
other than tangible storage media. 952

(DDD) "Prewritten computer software" means computer 953

software, including prewritten upgrades, that is not designed 954
and developed by the author or other creator to the 955
specifications of a specific purchaser. The combining of two or 956
more prewritten computer software programs or prewritten 957
portions thereof does not cause the combination to be other than 958
prewritten computer software. "Prewritten computer software" 959
includes software designed and developed by the author or other 960
creator to the specifications of a specific purchaser when it is 961
sold to a person other than the purchaser. If a person modifies 962
or enhances computer software of which the person is not the 963
author or creator, the person shall be deemed to be the author 964
or creator only of such person's modifications or enhancements. 965
Prewritten computer software or a prewritten portion thereof 966
that is modified or enhanced to any degree, where such 967
modification or enhancement is designed and developed to the 968
specifications of a specific purchaser, remains prewritten 969
computer software; provided, however, that where there is a 970
reasonable, separately stated charge or an invoice or other 971
statement of the price given to the purchaser for the 972
modification or enhancement, the modification or enhancement 973
shall not constitute prewritten computer software. 974

(EEE) (1) "Food" means substances, whether in liquid, 975
concentrated, solid, frozen, dried, or dehydrated form, that are 976
sold for ingestion or chewing by humans and are consumed for 977
their taste or nutritional value. "Food" does not include 978
alcoholic beverages, dietary supplements, soft drinks, or 979
tobacco. 980

(2) As used in division (EEE) (1) of this section: 981

(a) "Alcoholic beverages" means beverages that are 982
suitable for human consumption and contain one-half of one per 983

cent or more of alcohol by volume.	984
(b) "Dietary supplements" means any product, other than tobacco, that is intended to supplement the diet and that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food for use as a sole item of a meal or of the diet; that is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label, as required by 21 C.F.R. 101.36; and that contains one or more of the following dietary ingredients:	985 986 987 988 989 990 991 992 993 994
(i) A vitamin;	995
(ii) A mineral;	996
(iii) An herb or other botanical;	997
(iv) An amino acid;	998
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	999 1000
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (EEE) (2) (b) (i) to (v) of this section.	1001 1002 1003
(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.	1004 1005 1006 1007 1008
(d) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.	1009 1010

(FFF) "Drug" means a compound, substance, or preparation, 1011
and any component of a compound, substance, or preparation, 1012
other than food, dietary supplements, or alcoholic beverages 1013
that is recognized in the official United States pharmacopoeia, 1014
official homeopathic pharmacopoeia of the United States, or 1015
official national formulary, and supplements to them; is 1016
intended for use in the diagnosis, cure, mitigation, treatment, 1017
or prevention of disease; or is intended to affect the structure 1018
or any function of the body. 1019

(GGG) "Prescription" means an order, formula, or recipe 1020
issued in any form of oral, written, electronic, or other means 1021
of transmission by a duly licensed practitioner authorized by 1022
the laws of this state to issue a prescription. 1023

(HHH) "Durable medical equipment" means equipment, 1024
including repair and replacement parts for such equipment, that 1025
can withstand repeated use, is primarily and customarily used to 1026
serve a medical purpose, generally is not useful to a person in 1027
the absence of illness or injury, and is not worn in or on the 1028
body. "Durable medical equipment" does not include mobility 1029
enhancing equipment. 1030

(III) "Mobility enhancing equipment" means equipment, 1031
including repair and replacement parts for such equipment, that 1032
is primarily and customarily used to provide or increase the 1033
ability to move from one place to another and is appropriate for 1034
use either in a home or a motor vehicle, that is not generally 1035
used by persons with normal mobility, and that does not include 1036
any motor vehicle or equipment on a motor vehicle normally 1037
provided by a motor vehicle manufacturer. "Mobility enhancing 1038
equipment" does not include durable medical equipment. 1039

(JJJ) "Prosthetic device" means a replacement, corrective, 1040

or supportive device, including repair and replacement parts for 1041
the device, worn on or in the human body to artificially replace 1042
a missing portion of the body, prevent or correct physical 1043
deformity or malfunction, or support a weak or deformed portion 1044
of the body. As used in this division, "prosthetic device" does 1045
not include corrective eyeglasses, contact lenses, or dental 1046
prosthesis. 1047

(KKK) (1) "Fractional aircraft ownership program" means a 1048
program in which persons within an affiliated group sell and 1049
manage fractional ownership program aircraft, provided that at 1050
least one hundred airworthy aircraft are operated in the program 1051
and the program meets all of the following criteria: 1052

(a) Management services are provided by at least one 1053
program manager within an affiliated group on behalf of the 1054
fractional owners. 1055

(b) Each program aircraft is owned or possessed by at 1056
least one fractional owner. 1057

(c) Each fractional owner owns or possesses at least a 1058
one-sixteenth interest in at least one fixed-wing program 1059
aircraft. 1060

(d) A dry-lease aircraft interchange arrangement is in 1061
effect among all of the fractional owners. 1062

(e) Multi-year program agreements are in effect regarding 1063
the fractional ownership, management services, and dry-lease 1064
aircraft interchange arrangement aspects of the program. 1065

(2) As used in division (KKK) (1) of this section: 1066

(a) "Affiliated group" has the same meaning as in division 1067
(B) (3) (e) of this section. 1068

(b) "Fractional owner" means a person that owns or 1069
possesses at least a one-sixteenth interest in a program 1070
aircraft and has entered into the agreements described in 1071
division (KKK) (1) (e) of this section. 1072

(c) "Fractional ownership program aircraft" or "program 1073
aircraft" means a turbojet aircraft that is owned or possessed 1074
by a fractional owner and that has been included in a dry-lease 1075
aircraft interchange arrangement and agreement under divisions 1076
(KKK) (1) (d) and (e) of this section, or an aircraft a program 1077
manager owns or possesses primarily for use in a fractional 1078
aircraft ownership program. 1079

(d) "Management services" means administrative and 1080
aviation support services furnished under a fractional aircraft 1081
ownership program in accordance with a management services 1082
agreement under division (KKK) (1) (e) of this section, and 1083
offered by the program manager to the fractional owners, 1084
including, at a minimum, the establishment and implementation of 1085
safety guidelines; the coordination of the scheduling of the 1086
program aircraft and crews; program aircraft maintenance; 1087
program aircraft insurance; crew training for crews employed, 1088
furnished, or contracted by the program manager or the 1089
fractional owner; the satisfaction of record-keeping 1090
requirements; and the development and use of an operations 1091
manual and a maintenance manual for the fractional aircraft 1092
ownership program. 1093

(e) "Program manager" means the person that offers 1094
management services to fractional owners pursuant to a 1095
management services agreement under division (KKK) (1) (e) of this 1096
section. 1097

(LLL) "Electronic publishing" means providing access to 1098

one or more of the following primarily for business customers, 1099
including the federal government or a state government or a 1100
political subdivision thereof, to conduct research: news; 1101
business, financial, legal, consumer, or credit materials; 1102
editorials, columns, reader commentary, or features; photos or 1103
images; archival or research material; legal notices, identity 1104
verification, or public records; scientific, educational, 1105
instructional, technical, professional, trade, or other literary 1106
materials; or other similar information which has been gathered 1107
and made available by the provider to the consumer in an 1108
electronic format. Providing electronic publishing includes the 1109
functions necessary for the acquisition, formatting, editing, 1110
storage, and dissemination of data or information that is the 1111
subject of a sale. 1112

(MMM) "Medicaid health insuring corporation" means a 1113
health insuring corporation that holds a certificate of 1114
authority under Chapter 1751. of the Revised Code and is under 1115
contract with the department of job and family services pursuant 1116
to section 5111.17 of the Revised Code. 1117

(NNN) "Managed care premium" means any premium, 1118
capitation, or other payment a medicaid health insuring 1119
corporation receives for providing or arranging for the 1120
provision of health care services to its members or enrollees 1121
residing in this state. 1122

(OOO) "Captive deer" means deer and other cervidae that 1123
have been legally acquired, or their offspring, that are 1124
privately owned for agricultural or farming purposes. 1125

(PPP) "Gift card" means a document, card, certificate, or 1126
other record, whether tangible or intangible, that may be 1127
redeemed by a consumer for a dollar value when making a purchase 1128

of tangible personal property or services.	1129
(QQQ) "Specified digital product" means an electronically transferred digital audiovisual work, digital audio work, or digital book.	1130 1131 1132
As used in division (QQQ) of this section:	1133
(1) "Digital audiovisual work" means a series of related images that, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.	1134 1135 1136
(2) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds, including digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.	1137 1138 1139 1140 1141
(3) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.	1142 1143
(4) "Electronically transferred" means obtained by the purchaser by means other than tangible storage media.	1144 1145
Sec. 5741.01. As used in this chapter:	1146
(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, business trusts, governments, and combinations of individuals of any form.	1147 1148 1149 1150 1151
(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state.	1152 1153
(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is	1154 1155

also "used" in this state if its consumer gives or otherwise 1156
distributes it, without charge, to recipients in this state. 1157

(D) "Purchase" means acquired or received for a 1158
consideration, whether such acquisition or receipt was effected 1159
by a transfer of title, or of possession, or of both, or a 1160
license to use or consume; whether such transfer was absolute or 1161
conditional, and by whatever means the transfer was effected; 1162
and whether the consideration was money, credit, barter, or 1163
exchange. Purchase includes production, even though the article 1164
produced was used, stored, or consumed by the producer. The 1165
transfer of copyrighted motion picture films for exhibition 1166
purposes is not a purchase, except such films as are used solely 1167
for advertising purposes. 1168

(E) "Seller" means the person from whom a purchase is 1169
made, and includes every person engaged in this state or 1170
elsewhere in the business of selling tangible personal property 1171
or providing a service for storage, use, or other consumption or 1172
benefit in this state; and when, in the opinion of the tax 1173
commissioner, it is necessary for the efficient administration 1174
of this chapter, to regard any salesperson, representative, 1175
peddler, or canvasser as the agent of a dealer, distributor, 1176
supervisor, or employer under whom the person operates, or from 1177
whom the person obtains tangible personal property, sold by the 1178
person for storage, use, or other consumption in this state, 1179
irrespective of whether or not the person is making such sales 1180
on the person's own behalf, or on behalf of such dealer, 1181
distributor, supervisor, or employer, the commissioner may 1182
regard the person as such agent, and may regard such dealer, 1183
distributor, supervisor, or employer as the seller. "Seller" 1184
does not include any person to the extent the person provides a 1185
communications medium, such as, but not limited to, newspapers, 1186

magazines, radio, television, or cable television, by means of 1187
which sellers solicit purchases of their goods or services. 1188

(F) "Consumer" means any person who has purchased tangible 1189
personal property or has been provided a service for storage, 1190
use, or other consumption or benefit in this state. "Consumer" 1191
does not include a person who receives, without charge, tangible 1192
personal property or a service. 1193

A person who performs a facility management or similar 1194
service contract for a contractee is a consumer of all tangible 1195
personal property and services purchased for use in connection 1196
with the performance of such contract, regardless of whether 1197
title to any such property vests in the contractee. The purchase 1198
of such property and services is not subject to the exception 1199
for resale under division (E) of section 5739.01 of the Revised 1200
Code. 1201

(G) (1) "Price," except as provided in divisions (G) (2) to 1202
~~(6)~~ (7) of this section, has the same meaning as in division (H) 1203
(1) of section 5739.01 of the Revised Code. 1204

(2) In the case of watercraft, outboard motors, or new 1205
motor vehicles, "price" has the same meaning as in divisions (H) 1206
(2) and (3) of section 5739.01 of the Revised Code. 1207

(3) In the case of a nonresident business consumer that 1208
purchases and uses tangible personal property outside this state 1209
and subsequently temporarily stores, uses, or otherwise consumes 1210
such tangible personal property in the conduct of business in 1211
this state, the consumer or the tax commissioner may determine 1212
the price based on the value of the temporary storage, use, or 1213
other consumption, in lieu of determining the price pursuant to 1214
division (G) (1) of this section. A price determination made by 1215

the consumer is subject to review and redetermination by the 1216
commissioner. 1217

(4) In the case of tangible personal property held in this 1218
state as inventory for sale or lease, and that is temporarily 1219
stored, used, or otherwise consumed in a taxable manner, the 1220
price is the value of the temporary use. A price determination 1221
made by the consumer is subject to review and redetermination by 1222
the commissioner. 1223

(5) In the case of tangible personal property originally 1224
purchased and used by the consumer outside this state, and that 1225
becomes permanently stored, used, or otherwise consumed in this 1226
state more than six months after its acquisition by the 1227
consumer, the consumer or the commissioner may determine the 1228
price based on the current value of such tangible personal 1229
property, in lieu of determining the price pursuant to division 1230
(G) (1) of this section. A price determination made by the 1231
consumer is subject to review and redetermination by the 1232
commissioner. 1233

(6) If a consumer produces tangible personal property for 1234
sale and removes that property from inventory for the consumer's 1235
own use, the price is the produced cost of that tangible 1236
personal property. 1237

(7) In the case of optical aids or components thereof sold 1238
by an eligible vendor as received by the eligible vendor from 1239
others, "price" has the same meaning as in division (H) (5) of 1240
section 5739.01 of the Revised Code. 1241

As used in division (G) (7) of this section, "optical aid" 1242
and "eligible vendor" have the same meanings as in division (H) 1243
(5) of section 5739.01 of the Revised Code. 1244

(H) "Nexus with this state" means that the seller engages 1245
in continuous and widespread solicitation of purchases from 1246
residents of this state or otherwise purposefully directs its 1247
business activities at residents of this state. 1248

(I) (1) "Substantial nexus with this state" means that the 1249
seller has sufficient contact with this state, in accordance 1250
with Section 8 of Article I of the Constitution of the United 1251
States, to allow the state to require the seller to collect and 1252
remit use tax on sales of tangible personal property or services 1253
made to consumers in this state. 1254

(2) "Substantial nexus with this state" is presumed to 1255
exist when the seller does any of the following: 1256

(a) Uses an office, distribution facility, warehouse, 1257
storage facility, or similar place of business within this 1258
state, whether operated by the seller or any other person, other 1259
than a common carrier acting in its capacity as a common 1260
carrier. 1261

(b) Regularly uses employees, agents, representatives, 1262
solicitors, installers, repairers, salespersons, or other 1263
persons in this state for the purpose of conducting the business 1264
of the seller or either to engage in a business with the same or 1265
a similar industry classification as the seller selling a 1266
similar product or line of products as the seller, or to use 1267
trademarks, service marks, or trade names in this state that are 1268
the same or substantially similar to those used by the seller. 1269

(c) Uses any person, other than a common carrier acting in 1270
its capacity as a common carrier, in this state for any of the 1271
following purposes: 1272

(i) Receiving or processing orders of the seller's goods 1273

or services;	1274
(ii) Using that person's employees or facilities in this state to advertise, promote, or facilitate sales by the seller to customers;	1275 1276 1277
(iii) Delivering, installing, assembling, or performing maintenance services for the seller's customers;	1278 1279
(iv) Facilitating the seller's delivery of tangible personal property to customers in this state by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage facility, or similar place of business.	1280 1281 1282 1283 1284
(d) Makes regular deliveries of tangible personal property into this state by means other than common carrier.	1285 1286
(e) Has an affiliated person that has substantial nexus with this state.	1287 1288
(f) Owns tangible personal property that is rented or leased to a consumer in this state, or offers tangible personal property, on approval, to consumers in this state.	1289 1290 1291
(g) Enters into an agreement with one or more residents of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers to the seller, whether by a link on a web site, an in-person oral presentation, telemarketing, or otherwise, provided the cumulative gross receipts from sales to consumers referred to the seller by all such residents exceeded ten thousand dollars during the preceding twelve months.	1292 1293 1294 1295 1296 1297 1298 1299
(3) A seller presumed to have substantial nexus with this state under divisions (I) (2) (a) to (f) of this section may rebut	1300 1301

that presumption by demonstrating that activities described in 1302
any of those divisions that are conducted by a person in this 1303
state on the seller's behalf are not significantly associated 1304
with the seller's ability to establish or maintain a market in 1305
this state for the seller's sales. 1306

(4) A seller presumed to have substantial nexus with this 1307
state under division (I) (2) (g) of this section may rebut that 1308
presumption by submitting proof that each resident engaged by 1309
the seller as described in that division did not engage in any 1310
activity within this state during the preceding twelve months 1311
that was significantly associated with the seller's ability to 1312
establish or maintain the seller's market in this state during 1313
the preceding twelve months. Such proof may consist of sworn 1314
written statements from all the residents with whom the seller 1315
has an agreement stating that the resident did not engage in any 1316
solicitation in this state on behalf of the seller during the 1317
preceding twelve months if such statements are provided and 1318
obtained in good faith. 1319

(5) A seller that does not have substantial nexus with 1320
this state, and any affiliated person of the seller, before 1321
selling or leasing tangible personal property or services to a 1322
state agency, shall register with the tax commissioner in the 1323
same manner as a seller described in division (A) (1) of section 1324
5741.17 of the Revised Code. 1325

(6) As used in division (I) of this section: 1326

(a) "Affiliated person" means any person that is a member 1327
of the same controlled group of corporations as the seller or 1328
any other person that, notwithstanding the form of organization, 1329
bears the same ownership relationship to the seller as a 1330
corporation that is a member of the same controlled group of 1331

corporations. 1332

(b) "Controlled group of corporations" has the same 1333
meaning as in section 1563(a) of the Internal Revenue Code. 1334

(c) "State agency" has the same meaning as in section 1.60 1335
of the Revised Code. 1336

(J) "Fiscal officer" means, with respect to a regional 1337
transit authority, the secretary-treasurer thereof, and with 1338
respect to a county which is a transit authority, the fiscal 1339
officer of the county transit board appointed pursuant to 1340
section 306.03 of the Revised Code or, if the board of county 1341
commissioners operates the county transit system, the county 1342
auditor. 1343

(K) "Territory of the transit authority" means all of the 1344
area included within the territorial boundaries of a transit 1345
authority as they from time to time exist. Such territorial 1346
boundaries must at all times include all the area of a single 1347
county or all the area of the most populous county which is a 1348
part of such transit authority. County population shall be 1349
measured by the most recent census taken by the United States 1350
census bureau. 1351

(L) "Transit authority" means a regional transit authority 1352
created pursuant to section 306.31 of the Revised Code or a 1353
county in which a county transit system is created pursuant to 1354
section 306.01 of the Revised Code. For the purposes of this 1355
chapter, a transit authority must extend to at least the entire 1356
area of a single county. A transit authority which includes 1357
territory in more than one county must include all the area of 1358
the most populous county which is a part of such transit 1359
authority. County population shall be measured by the most 1360

recent census taken by the United States census bureau. 1361

(M) "Providing a service" has the same meaning as in 1362
section 5739.01 of the Revised Code. 1363

(N) "Other consumption" includes receiving the benefits of 1364
a service. 1365

(O) "Lease" or "rental" has the same meaning as in section 1366
5739.01 of the Revised Code. 1367

(P) "Certified service provider" has the same meaning as 1368
in section 5740.01 of the Revised Code. 1369

(Q) "Remote sale" means a sale for which the seller could 1370
not be legally required to pay, collect, or remit a tax imposed 1371
under this chapter or Chapter 5739. of the Revised Code, unless 1372
otherwise provided by the laws of the United States. 1373

(R) "Remote seller" means a seller that lacks substantial 1374
nexus with this state but is required to register with the tax 1375
commissioner under section 5741.17 of the Revised Code pursuant 1376
to federal law authorizing states to require such sellers to 1377
register, collect, and remit use tax. A seller that is not 1378
required to register with the commissioner under division (A) of 1379
section 5741.17 of the Revised Code but registers voluntarily 1380
under division (B) of that section is not a "remote seller." A 1381
seller that registers with the commissioner under section 1382
5741.17 of the Revised Code after the effective date of any 1383
federal law that authorizes states to require sellers that lack 1384
substantial nexus with the state to register, collect, and remit 1385
use tax is presumed to be a "remote seller." The seller or the 1386
commissioner may rebut this presumption with evidence that the 1387
seller has substantial nexus with this state. 1388

(S) "Remote small seller" means a remote seller that has 1389

gross annual receipts from remote sales in the United States not 1390
exceeding one million dollars for the preceding calendar year. 1391
For the purposes of determining whether a person is a small 1392
remote seller, the sales of all persons related within the 1393
meaning of subsection (b) or (c) of section 267 or section 1394
707(b)(1) of the Internal Revenue Code shall be aggregated, and 1395
persons with one or more ownership relationships shall be 1396
aggregated if those relationships were designed with the 1397
principal purpose to qualify as a remote small seller. 1398

Section 2. That existing sections 5739.01 and 5741.01 of 1399
the Revised Code are hereby repealed. 1400

Section 3. The amendment by this act of sections 5739.01 1401
and 5741.01 of the Revised Code applies on and after January 1, 1402
2016. 1403