

As Introduced

133rd General Assembly

Regular Session

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H. B. No. 135

Representative Antani

**Cosponsors: Representatives Riedel, Miranda, Cross, Patterson, O'Brien,
Edwards, Hood**

A BILL

To amend section 5739.02 of the Revised Code to 1
expand the class of products exempt from sales 2
tax if bought during a sales tax holiday. 3

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

Section 1. That section 5739.02 of the Revised Code be 4
amended to read as follows: 5

Sec. 5739.02. For the purpose of providing revenue with 6
which to meet the needs of the state, for the use of the general 7
revenue fund of the state, for the purpose of securing a 8
thorough and efficient system of common schools throughout the 9
state, for the purpose of affording revenues, in addition to 10
those from general property taxes, permitted under 11
constitutional limitations, and from other sources, for the 12
support of local governmental functions, and for the purpose of 13
reimbursing the state for the expense of administering this 14
chapter, an excise tax is hereby levied on each retail sale made 15
in this state. 16

(A) (1) The tax shall be collected as provided in section 17

5739.025 of the Revised Code. The rate of the tax shall be five 18
and three-fourths per cent. The tax applies and is collectible 19
when the sale is made, regardless of the time when the price is 20
paid or delivered. 21

(2) In the case of the lease or rental, with a fixed term 22
of more than thirty days or an indefinite term with a minimum 23
period of more than thirty days, of any motor vehicles designed 24
by the manufacturer to carry a load of not more than one ton, 25
watercraft, outboard motor, or aircraft, or of any tangible 26
personal property, other than motor vehicles designed by the 27
manufacturer to carry a load of more than one ton, to be used by 28
the lessee or renter primarily for business purposes, the tax 29
shall be collected by the vendor at the time the lease or rental 30
is consummated and shall be calculated by the vendor on the 31
basis of the total amount to be paid by the lessee or renter 32
under the lease agreement. If the total amount of the 33
consideration for the lease or rental includes amounts that are 34
not calculated at the time the lease or rental is executed, the 35
tax shall be calculated and collected by the vendor at the time 36
such amounts are billed to the lessee or renter. In the case of 37
an open-end lease or rental, the tax shall be calculated by the 38
vendor on the basis of the total amount to be paid during the 39
initial fixed term of the lease or rental, and for each 40
subsequent renewal period as it comes due. As used in this 41
division, "motor vehicle" has the same meaning as in section 42
4501.01 of the Revised Code, and "watercraft" includes an 43
outdrive unit attached to the watercraft. 44

A lease with a renewal clause and a termination penalty or 45
similar provision that applies if the renewal clause is not 46
exercised is presumed to be a sham transaction. In such a case, 47
the tax shall be calculated and paid on the basis of the entire 48

length of the lease period, including any renewal periods, until 49
the termination penalty or similar provision no longer applies. 50
The taxpayer shall bear the burden, by a preponderance of the 51
evidence, that the transaction or series of transactions is not 52
a sham transaction. 53

(3) Except as provided in division (A)(2) of this section, 54
in the case of a sale, the price of which consists in whole or 55
in part of the lease or rental of tangible personal property, 56
the tax shall be measured by the installments of that lease or 57
rental. 58

(4) In the case of a sale of a physical fitness facility 59
service or recreation and sports club service, the price of 60
which consists in whole or in part of a membership for the 61
receipt of the benefit of the service, the tax applicable to the 62
sale shall be measured by the installments thereof. 63

(B) The tax does not apply to the following: 64

(1) Sales to the state or any of its political 65
subdivisions, or to any other state or its political 66
subdivisions if the laws of that state exempt from taxation 67
sales made to this state and its political subdivisions; 68

(2) Sales of food for human consumption off the premises 69
where sold; 70

(3) Sales of food sold to students only in a cafeteria, 71
dormitory, fraternity, or sorority maintained in a private, 72
public, or parochial school, college, or university; 73

(4) Sales of newspapers and sales or transfers of 74
magazines distributed as controlled circulation publications; 75

(5) The furnishing, preparing, or serving of meals without 76

charge by an employer to an employee provided the employer 77
records the meals as part compensation for services performed or 78
work done; 79

(6) Sales of motor fuel upon receipt, use, distribution, 80
or sale of which in this state a tax is imposed by the law of 81
this state, but this exemption shall not apply to the sale of 82
motor fuel on which a refund of the tax is allowable under 83
division (A) of section 5735.14 of the Revised Code; and the tax 84
commissioner may deduct the amount of tax levied by this section 85
applicable to the price of motor fuel when granting a refund of 86
motor fuel tax pursuant to division (A) of section 5735.14 of 87
the Revised Code and shall cause the amount deducted to be paid 88
into the general revenue fund of this state; 89

(7) Sales of natural gas by a natural gas company or 90
municipal gas utility, of water by a water-works company, or of 91
steam by a heating company, if in each case the thing sold is 92
delivered to consumers through pipes or conduits, and all sales 93
of communications services by a telegraph company, all terms as 94
defined in section 5727.01 of the Revised Code, and sales of 95
electricity delivered through wires; 96

(8) Casual sales by a person, or auctioneer employed 97
directly by the person to conduct such sales, except as to such 98
sales of motor vehicles, watercraft or outboard motors required 99
to be titled under section 1548.06 of the Revised Code, 100
watercraft documented with the United States coast guard, 101
snowmobiles, and all-purpose vehicles as defined in section 102
4519.01 of the Revised Code; 103

(9) (a) Sales of services or tangible personal property, 104
other than motor vehicles, mobile homes, and manufactured homes, 105
by churches, organizations exempt from taxation under section 106

501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 107
organizations operated exclusively for charitable purposes as 108
defined in division (B) (12) of this section, provided that the 109
number of days on which such tangible personal property or 110
services, other than items never subject to the tax, are sold 111
does not exceed six in any calendar year, except as otherwise 112
provided in division (B) (9) (b) of this section. If the number of 113
days on which such sales are made exceeds six in any calendar 114
year, the church or organization shall be considered to be 115
engaged in business and all subsequent sales by it shall be 116
subject to the tax. In counting the number of days, all sales by 117
groups within a church or within an organization shall be 118
considered to be sales of that church or organization. 119

(b) The limitation on the number of days on which tax- 120
exempt sales may be made by a church or organization under 121
division (B) (9) (a) of this section does not apply to sales made 122
by student clubs and other groups of students of a primary or 123
secondary school, or a parent-teacher association, booster 124
group, or similar organization that raises money to support or 125
fund curricular or extracurricular activities of a primary or 126
secondary school. 127

(c) Divisions (B) (9) (a) and (b) of this section do not 128
apply to sales by a noncommercial educational radio or 129
television broadcasting station. 130

(10) Sales not within the taxing power of this state under 131
the Constitution or laws of the United States or the 132
Constitution of this state; 133

(11) Except for transactions that are sales under division 134
(B) (3) (r) of section 5739.01 of the Revised Code, the 135
transportation of persons or property, unless the transportation 136

is by a private investigation and security service; 137

(12) Sales of tangible personal property or services to 138
churches, to organizations exempt from taxation under section 139
501(c) (3) of the Internal Revenue Code of 1986, and to any other 140
nonprofit organizations operated exclusively for charitable 141
purposes in this state, no part of the net income of which 142
inures to the benefit of any private shareholder or individual, 143
and no substantial part of the activities of which consists of 144
carrying on propaganda or otherwise attempting to influence 145
legislation; sales to offices administering one or more homes 146
for the aged or one or more hospital facilities exempt under 147
section 140.08 of the Revised Code; and sales to organizations 148
described in division (D) of section 5709.12 of the Revised 149
Code. 150

"Charitable purposes" means the relief of poverty; the 151
improvement of health through the alleviation of illness, 152
disease, or injury; the operation of an organization exclusively 153
for the provision of professional, laundry, printing, and 154
purchasing services to hospitals or charitable institutions; the 155
operation of a home for the aged, as defined in section 5701.13 156
of the Revised Code; the operation of a radio or television 157
broadcasting station that is licensed by the federal 158
communications commission as a noncommercial educational radio 159
or television station; the operation of a nonprofit animal 160
adoption service or a county humane society; the promotion of 161
education by an institution of learning that maintains a faculty 162
of qualified instructors, teaches regular continuous courses of 163
study, and confers a recognized diploma upon completion of a 164
specific curriculum; the operation of a parent-teacher 165
association, booster group, or similar organization primarily 166
engaged in the promotion and support of the curricular or 167

extracurricular activities of a primary or secondary school; the 168
operation of a community or area center in which presentations 169
in music, dramatics, the arts, and related fields are made in 170
order to foster public interest and education therein; the 171
production of performances in music, dramatics, and the arts; or 172
the promotion of education by an organization engaged in 173
carrying on research in, or the dissemination of, scientific and 174
technological knowledge and information primarily for the 175
public. 176

Nothing in this division shall be deemed to exempt sales 177
to any organization for use in the operation or carrying on of a 178
trade or business, or sales to a home for the aged for use in 179
the operation of independent living facilities as defined in 180
division (A) of section 5709.12 of the Revised Code. 181

(13) Building and construction materials and services sold 182
to construction contractors for incorporation into a structure 183
or improvement to real property under a construction contract 184
with this state or a political subdivision of this state, or 185
with the United States government or any of its agencies; 186
building and construction materials and services sold to 187
construction contractors for incorporation into a structure or 188
improvement to real property that are accepted for ownership by 189
this state or any of its political subdivisions, or by the 190
United States government or any of its agencies at the time of 191
completion of the structures or improvements; building and 192
construction materials sold to construction contractors for 193
incorporation into a horticulture structure or livestock 194
structure for a person engaged in the business of horticulture 195
or producing livestock; building materials and services sold to 196
a construction contractor for incorporation into a house of 197
public worship or religious education, or a building used 198

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| exclusively for charitable purposes under a construction | 199 |
| contract with an organization whose purpose is as described in | 200 |
| division (B) (12) of this section; building materials and | 201 |
| services sold to a construction contractor for incorporation | 202 |
| into a building under a construction contract with an | 203 |
| organization exempt from taxation under section 501(c) (3) of the | 204 |
| Internal Revenue Code of 1986 when the building is to be used | 205 |
| exclusively for the organization's exempt purposes; building and | 206 |
| construction materials sold for incorporation into the original | 207 |
| construction of a sports facility under section 307.696 of the | 208 |
| Revised Code; building and construction materials and services | 209 |
| sold to a construction contractor for incorporation into real | 210 |
| property outside this state if such materials and services, when | 211 |
| sold to a construction contractor in the state in which the real | 212 |
| property is located for incorporation into real property in that | 213 |
| state, would be exempt from a tax on sales levied by that state; | 214 |
| building and construction materials for incorporation into a | 215 |
| transportation facility pursuant to a public-private agreement | 216 |
| entered into under sections 5501.70 to 5501.83 of the Revised | 217 |
| Code; and, until one calendar year after the construction of a | 218 |
| convention center that qualifies for property tax exemption | 219 |
| under section 5709.084 of the Revised Code is completed, | 220 |
| building and construction materials and services sold to a | 221 |
| construction contractor for incorporation into the real property | 222 |
| comprising that convention center; | 223 |
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| (14) Sales of ships or vessels or rail rolling stock used | 224 |
| or to be used principally in interstate or foreign commerce, and | 225 |
| repairs, alterations, fuel, and lubricants for such ships or | 226 |
| vessels or rail rolling stock; | 227 |
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| (15) Sales to persons primarily engaged in any of the | 228 |
| activities mentioned in division (B) (42) (a), (g), or (h) of this | 229 |

section, to persons engaged in making retail sales, or to 230
persons who purchase for sale from a manufacturer tangible 231
personal property that was produced by the manufacturer in 232
accordance with specific designs provided by the purchaser, of 233
packages, including material, labels, and parts for packages, 234
and of machinery, equipment, and material for use primarily in 235
packaging tangible personal property produced for sale, 236
including any machinery, equipment, and supplies used to make 237
labels or packages, to prepare packages or products for 238
labeling, or to label packages or products, by or on the order 239
of the person doing the packaging, or sold at retail. "Packages" 240
includes bags, baskets, cartons, crates, boxes, cans, bottles, 241
bindings, wrappings, and other similar devices and containers, 242
but does not include motor vehicles or bulk tanks, trailers, or 243
similar devices attached to motor vehicles. "Packaging" means 244
placing in a package. Division (B) (15) of this section does not 245
apply to persons engaged in highway transportation for hire. 246

(16) Sales of food to persons using supplemental nutrition 247
assistance program benefits to purchase the food. As used in 248
this division, "food" has the same meaning as in 7 U.S.C. 2012 249
and federal regulations adopted pursuant to the Food and 250
Nutrition Act of 2008. 251

(17) Sales to persons engaged in farming, agriculture, 252
horticulture, or floriculture, of tangible personal property for 253
use or consumption primarily in the production by farming, 254
agriculture, horticulture, or floriculture of other tangible 255
personal property for use or consumption primarily in the 256
production of tangible personal property for sale by farming, 257
agriculture, horticulture, or floriculture; or material and 258
parts for incorporation into any such tangible personal property 259
for use or consumption in production; and of tangible personal 260

property for such use or consumption in the conditioning or 261
holding of products produced by and for such use, consumption, 262
or sale by persons engaged in farming, agriculture, 263
horticulture, or floriculture, except where such property is 264
incorporated into real property; 265

(18) Sales of drugs for a human being that may be 266
dispensed only pursuant to a prescription; insulin as recognized 267
in the official United States pharmacopoeia; urine and blood 268
testing materials when used by diabetics or persons with 269
hypoglycemia to test for glucose or acetone; hypodermic syringes 270
and needles when used by diabetics for insulin injections; 271
epoetin alfa when purchased for use in the treatment of persons 272
with medical disease; hospital beds when purchased by hospitals, 273
nursing homes, or other medical facilities; and medical oxygen 274
and medical oxygen-dispensing equipment when purchased by 275
hospitals, nursing homes, or other medical facilities; 276

(19) Sales of prosthetic devices, durable medical 277
equipment for home use, or mobility enhancing equipment, when 278
made pursuant to a prescription and when such devices or 279
equipment are for use by a human being. 280

(20) Sales of emergency and fire protection vehicles and 281
equipment to nonprofit organizations for use solely in providing 282
fire protection and emergency services, including trauma care 283
and emergency medical services, for political subdivisions of 284
the state; 285

(21) Sales of tangible personal property manufactured in 286
this state, if sold by the manufacturer in this state to a 287
retailer for use in the retail business of the retailer outside 288
of this state and if possession is taken from the manufacturer 289
by the purchaser within this state for the sole purpose of 290

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| immediately removing the same from this state in a vehicle owned | 291 |
| by the purchaser; | 292 |
| (22) Sales of services provided by the state or any of its | 293 |
| political subdivisions, agencies, instrumentalities, | 294 |
| institutions, or authorities, or by governmental entities of the | 295 |
| state or any of its political subdivisions, agencies, | 296 |
| instrumentalities, institutions, or authorities; | 297 |
| (23) Sales of motor vehicles to nonresidents of this state | 298 |
| under the circumstances described in division (B) of section | 299 |
| 5739.029 of the Revised Code; | 300 |
| (24) Sales to persons engaged in the preparation of eggs | 301 |
| for sale of tangible personal property used or consumed directly | 302 |
| in such preparation, including such tangible personal property | 303 |
| used for cleaning, sanitizing, preserving, grading, sorting, and | 304 |
| classifying by size; packages, including material and parts for | 305 |
| packages, and machinery, equipment, and material for use in | 306 |
| packaging eggs for sale; and handling and transportation | 307 |
| equipment and parts therefor, except motor vehicles licensed to | 308 |
| operate on public highways, used in intraplant or interplant | 309 |
| transfers or shipment of eggs in the process of preparation for | 310 |
| sale, when the plant or plants within or between which such | 311 |
| transfers or shipments occur are operated by the same person. | 312 |
| "Packages" includes containers, cases, baskets, flats, fillers, | 313 |
| filler flats, cartons, closure materials, labels, and labeling | 314 |
| materials, and "packaging" means placing therein. | 315 |
| (25) (a) Sales of water to a consumer for residential use; | 316 |
| (b) Sales of water by a nonprofit corporation engaged | 317 |
| exclusively in the treatment, distribution, and sale of water to | 318 |
| consumers, if such water is delivered to consumers through pipes | 319 |

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| or tubing. | 320 |
| (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code; | 321 322 |
| (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: | 323 324 325 326 |
| (a) To prepare food for human consumption for sale; | 327 |
| (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; | 328 329 330 331 |
| (c) To clean tangible personal property used to prepare or serve food for human consumption for sale. | 332 333 |
| (28) Sales of animals by nonprofit animal adoption services or county humane societies; | 334 335 |
| (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; | 336 337 338 339 |
| (30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code; | 340 341 342 |
| (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; | 343 344 345 |
| (32) The sale, lease, repair, and maintenance of, parts | 346 |

for, or items attached to or incorporated in, motor vehicles 347
that are primarily used for transporting tangible personal 348
property belonging to others by a person engaged in highway 349
transportation for hire, except for packages and packaging used 350
for the transportation of tangible personal property; 351

(33) Sales to the state headquarters of any veterans' 352
organization in this state that is either incorporated and 353
issued a charter by the congress of the United States or is 354
recognized by the United States veterans administration, for use 355
by the headquarters; 356

(34) Sales to a telecommunications service vendor, mobile 357
telecommunications service vendor, or satellite broadcasting 358
service vendor of tangible personal property and services used 359
directly and primarily in transmitting, receiving, switching, or 360
recording any interactive, one- or two-way electromagnetic 361
communications, including voice, image, data, and information, 362
through the use of any medium, including, but not limited to, 363
poles, wires, cables, switching equipment, computers, and record 364
storage devices and media, and component parts for the tangible 365
personal property. The exemption provided in this division shall 366
be in lieu of all other exemptions under division (B) (42) (a) or 367
(n) of this section to which the vendor may otherwise be 368
entitled, based upon the use of the thing purchased in providing 369
the telecommunications, mobile telecommunications, or satellite 370
broadcasting service. 371

(35) (a) Sales where the purpose of the consumer is to use 372
or consume the things transferred in making retail sales and 373
consisting of newspaper inserts, catalogues, coupons, flyers, 374
gift certificates, or other advertising material that prices and 375
describes tangible personal property offered for retail sale. 376

(b) Sales to direct marketing vendors of preliminary 377
materials such as photographs, artwork, and typesetting that 378
will be used in printing advertising material; and of printed 379
matter that offers free merchandise or chances to win sweepstake 380
prizes and that is mailed to potential customers with 381
advertising material described in division (B) (35) (a) of this 382
section; 383

(c) Sales of equipment such as telephones, computers, 384
facsimile machines, and similar tangible personal property 385
primarily used to accept orders for direct marketing retail 386
sales. 387

(d) Sales of automatic food vending machines that preserve 388
food with a shelf life of forty-five days or less by 389
refrigeration and dispense it to the consumer. 390

For purposes of division (B) (35) of this section, "direct 391
marketing" means the method of selling where consumers order 392
tangible personal property by United States mail, delivery 393
service, or telecommunication and the vendor delivers or ships 394
the tangible personal property sold to the consumer from a 395
warehouse, catalogue distribution center, or similar fulfillment 396
facility by means of the United States mail, delivery service, 397
or common carrier. 398

(36) Sales to a person engaged in the business of 399
horticulture or producing livestock of materials to be 400
incorporated into a horticulture structure or livestock 401
structure; 402

(37) Sales of personal computers, computer monitors, 403
computer keyboards, modems, and other peripheral computer 404
equipment to an individual who is licensed or certified to teach 405

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| in an elementary or a secondary school in this state for use by | 406 |
| that individual in preparation for teaching elementary or | 407 |
| secondary school students; | 408 |
| (38) Sales to a professional racing team of any of the | 409 |
| following: | 410 |
| (a) Motor racing vehicles; | 411 |
| (b) Repair services for motor racing vehicles; | 412 |
| (c) Items of property that are attached to or incorporated | 413 |
| in motor racing vehicles, including engines, chassis, and all | 414 |
| other components of the vehicles, and all spare, replacement, | 415 |
| and rebuilt parts or components of the vehicles; except not | 416 |
| including tires, consumable fluids, paint, and accessories | 417 |
| consisting of instrumentation sensors and related items added to | 418 |
| the vehicle to collect and transmit data by means of telemetry | 419 |
| and other forms of communication. | 420 |
| (39) Sales of used manufactured homes and used mobile | 421 |
| homes, as defined in section 5739.0210 of the Revised Code, made | 422 |
| on or after January 1, 2000; | 423 |
| (40) Sales of tangible personal property and services to a | 424 |
| provider of electricity used or consumed directly and primarily | 425 |
| in generating, transmitting, or distributing electricity for use | 426 |
| by others, including property that is or is to be incorporated | 427 |
| into and will become a part of the consumer's production, | 428 |
| transmission, or distribution system and that retains its | 429 |
| classification as tangible personal property after | 430 |
| incorporation; fuel or power used in the production, | 431 |
| transmission, or distribution of electricity; energy conversion | 432 |
| equipment as defined in section 5727.01 of the Revised Code; and | 433 |
| tangible personal property and services used in the repair and | 434 |

maintenance of the production, transmission, or distribution 435
system, including only those motor vehicles as are specially 436
designed and equipped for such use. The exemption provided in 437
this division shall be in lieu of all other exemptions in 438
division (B) (42) (a) or (n) of this section to which a provider 439
of electricity may otherwise be entitled based on the use of the 440
tangible personal property or service purchased in generating, 441
transmitting, or distributing electricity. 442

(41) Sales to a person providing services under division 443
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 444
personal property and services used directly and primarily in 445
providing taxable services under that section. 446

(42) Sales where the purpose of the purchaser is to do any 447
of the following: 448

(a) To incorporate the thing transferred as a material or 449
a part into tangible personal property to be produced for sale 450
by manufacturing, assembling, processing, or refining; or to use 451
or consume the thing transferred directly in producing tangible 452
personal property for sale by mining, including, without 453
limitation, the extraction from the earth of all substances that 454
are classed geologically as minerals, or directly in the 455
rendition of a public utility service, except that the sales tax 456
levied by this section shall be collected upon all meals, 457
drinks, and food for human consumption sold when transporting 458
persons. This paragraph does not exempt from "retail sale" or 459
"sales at retail" the sale of tangible personal property that is 460
to be incorporated into a structure or improvement to real 461
property. 462

(b) To hold the thing transferred as security for the 463
performance of an obligation of the vendor; 464

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| (c) To resell, hold, use, or consume the thing transferred | 465 |
| as evidence of a contract of insurance; | 466 |
| (d) To use or consume the thing directly in commercial | 467 |
| fishing; | 468 |
| (e) To incorporate the thing transferred as a material or | 469 |
| a part into, or to use or consume the thing transferred directly | 470 |
| in the production of, magazines distributed as controlled | 471 |
| circulation publications; | 472 |
| (f) To use or consume the thing transferred in the | 473 |
| production and preparation in suitable condition for market and | 474 |
| sale of printed, imprinted, overprinted, lithographic, | 475 |
| multilithic, blueprinted, photostatic, or other productions or | 476 |
| reproductions of written or graphic matter; | 477 |
| (g) To use the thing transferred, as described in section | 478 |
| 5739.011 of the Revised Code, primarily in a manufacturing | 479 |
| operation to produce tangible personal property for sale; | 480 |
| (h) To use the benefit of a warranty, maintenance or | 481 |
| service contract, or similar agreement, as described in division | 482 |
| (B) (7) of section 5739.01 of the Revised Code, to repair or | 483 |
| maintain tangible personal property, if all of the property that | 484 |
| is the subject of the warranty, contract, or agreement would not | 485 |
| be subject to the tax imposed by this section; | 486 |
| (i) To use the thing transferred as qualified research and | 487 |
| development equipment; | 488 |
| (j) To use or consume the thing transferred primarily in | 489 |
| storing, transporting, mailing, or otherwise handling purchased | 490 |
| sales inventory in a warehouse, distribution center, or similar | 491 |
| facility when the inventory is primarily distributed outside | 492 |
| this state to retail stores of the person who owns or controls | 493 |

the warehouse, distribution center, or similar facility, to 494
retail stores of an affiliated group of which that person is a 495
member, or by means of direct marketing. This division does not 496
apply to motor vehicles registered for operation on the public 497
highways. As used in this division, "affiliated group" has the 498
same meaning as in division (B) (3) (e) of section 5739.01 of the 499
Revised Code and "direct marketing" has the same meaning as in 500
division (B) (35) of this section. 501

(k) To use or consume the thing transferred to fulfill a 502
contractual obligation incurred by a warrantor pursuant to a 503
warranty provided as a part of the price of the tangible 504
personal property sold or by a vendor of a warranty, maintenance 505
or service contract, or similar agreement the provision of which 506
is defined as a sale under division (B) (7) of section 5739.01 of 507
the Revised Code; 508

(l) To use or consume the thing transferred in the 509
production of a newspaper for distribution to the public; 510

(m) To use tangible personal property to perform a service 511
listed in division (B) (3) of section 5739.01 of the Revised 512
Code, if the property is or is to be permanently transferred to 513
the consumer of the service as an integral part of the 514
performance of the service; 515

(n) To use or consume the thing transferred primarily in 516
producing tangible personal property for sale by farming, 517
agriculture, horticulture, or floriculture. Persons engaged in 518
rendering farming, agriculture, horticulture, or floriculture 519
services for others are deemed engaged primarily in farming, 520
agriculture, horticulture, or floriculture. This paragraph does 521
not exempt from "retail sale" or "sales at retail" the sale of 522
tangible personal property that is to be incorporated into a 523

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| structure or improvement to real property. | 524 |
| (o) To use or consume the thing transferred in acquiring, | 525 |
| formatting, editing, storing, and disseminating data or | 526 |
| information by electronic publishing; | 527 |
| (p) To provide the thing transferred to the owner or | 528 |
| lessee of a motor vehicle that is being repaired or serviced, if | 529 |
| the thing transferred is a rented motor vehicle and the | 530 |
| purchaser is reimbursed for the cost of the rented motor vehicle | 531 |
| by a manufacturer, warrantor, or provider of a maintenance, | 532 |
| service, or other similar contract or agreement, with respect to | 533 |
| the motor vehicle that is being repaired or serviced; | 534 |
| (q) To use or consume the thing transferred directly in | 535 |
| production of crude oil and natural gas for sale. Persons | 536 |
| engaged in rendering production services for others are deemed | 537 |
| engaged in production. | 538 |
| As used in division (B) (42) (q) of this section, | 539 |
| "production" means operations and tangible personal property | 540 |
| directly used to expose and evaluate an underground reservoir | 541 |
| that may contain hydrocarbon resources, prepare the wellbore for | 542 |
| production, and lift and control all substances yielded by the | 543 |
| reservoir to the surface of the earth. | 544 |
| (i) For the purposes of division (B) (42) (q) of this | 545 |
| section, the "thing transferred" includes, but is not limited | 546 |
| to, any of the following: | 547 |
| (I) Services provided in the construction of permanent | 548 |
| access roads, services provided in the construction of the well | 549 |
| site, and services provided in the construction of temporary | 550 |
| impoundments; | 551 |
| (II) Equipment and rigging used for the specific purpose | 552 |

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| of creating with integrity a wellbore pathway to underground reservoirs; | 553 554 |
| (III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services; | 555 556 557 |
| (IV) Casing, tubulars, and float and centralizing equipment; | 558 559 |
| (V) Trailers to which production equipment is attached; | 560 |
| (VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services; | 561 562 563 |
| (VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services; | 564 565 566 |
| (VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole; | 567 568 569 570 |
| (IX) Pressure pumping equipment; | 571 |
| (X) Artificial lift systems equipment; | 572 |
| (XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon <u>hydrocarbon</u> phases and produced water; | 573 574 575 |
| (XII) Tangible personal property directly used to control production equipment. | 576 577 |
| (ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the | 578 579 |

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| following: | 580 |
| (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; | 581 582 583 |
| (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; | 584 585 586 |
| (III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks; | 587 588 589 |
| (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; | 590 591 592 593 |
| (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; | 594 595 596 597 |
| (VI) Tangible personal property that is to be incorporated into a structure or improvement to real property; | 598 599 |
| (VII) Well site fencing, lighting, or security systems; | 600 |
| (VIII) Communication devices or services; | 601 |
| (IX) Office supplies; | 602 |
| (X) Trailers used as offices or lodging; | 603 |
| (XI) Motor vehicles of any kind; | 604 |
| (XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production; | 605 606 |

(XIII) Tangible personal property used primarily as a safety device; 607
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(XIV) Data collection or monitoring devices; 609

(XV) Access ladders, stairs, or platforms attached to storage tanks. 610
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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. 612
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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. 617
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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. 621
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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. 624
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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 631
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supplies primarily used to provide those services. 636

(45) Sales of telecommunications service that is used 637
directly and primarily to perform the functions of a call 638
center. As used in this division, "call center" means any 639
physical location where telephone calls are placed or received 640
in high volume for the purpose of making sales, marketing, 641
customer service, technical support, or other specialized 642
business activity, and that employs at least fifty individuals 643
that engage in call center activities on a full-time basis, or 644
sufficient individuals to fill fifty full-time equivalent 645
positions. 646

(46) Sales by a telecommunications service vendor of 900 647
service to a subscriber. This division does not apply to 648
information services, as defined in division (FF) of section 649
5739.01 of the Revised Code. 650

(47) Sales of value-added non-voice data service. This 651
division does not apply to any similar service that is not 652
otherwise a telecommunications service. 653

(48) (a) Sales of machinery, equipment, and software to a 654
qualified direct selling entity for use in a warehouse or 655
distribution center primarily for storing, transporting, or 656
otherwise handling inventory that is held for sale to 657
independent salespersons who operate as direct sellers and that 658
is held primarily for distribution outside this state; 659

(b) As used in division (B) (48) (a) of this section: 660

(i) "Direct seller" means a person selling consumer 661
products to individuals for personal or household use and not 662
from a fixed retail location, including selling such product at 663
in-home product demonstrations, parties, and other one-on-one 664

selling. 665

(ii) "Qualified direct selling entity" means an entity 666
selling to direct sellers at the time the entity enters into a 667
tax credit agreement with the tax credit authority pursuant to 668
section 122.17 of the Revised Code, provided that the agreement 669
was entered into on or after January 1, 2007. Neither 670
contingencies relevant to the granting of, nor later 671
developments with respect to, the tax credit shall impair the 672
status of the qualified direct selling entity under division (B) 673
(48) of this section after execution of the tax credit agreement 674
by the tax credit authority. 675

(c) Division (B) (48) of this section is limited to 676
machinery, equipment, and software first stored, used, or 677
consumed in this state within the period commencing June 24, 678
2008, and ending on the date that is five years after that date. 679

(49) Sales of materials, parts, equipment, or engines used 680
in the repair or maintenance of aircraft or avionics systems of 681
such aircraft, and sales of repair, remodeling, replacement, or 682
maintenance services in this state performed on aircraft or on 683
an aircraft's avionics, engine, or component materials or parts. 684
As used in division (B) (49) of this section, "aircraft" means 685
aircraft of more than six thousand pounds maximum certified 686
takeoff weight or used exclusively in general aviation. 687

(50) Sales of full flight simulators that are used for 688
pilot or flight-crew training, sales of repair or replacement 689
parts or components, and sales of repair or maintenance services 690
for such full flight simulators. "Full flight simulator" means a 691
replica of a specific type, or make, model, and series of 692
aircraft cockpit. It includes the assemblage of equipment and 693
computer programs necessary to represent aircraft operations in 694

ground and flight conditions, a visual system providing an out- 695
of-the-cockpit view, and a system that provides cues at least 696
equivalent to those of a three-degree-of-freedom motion system, 697
and has the full range of capabilities of the systems installed 698
in the device as described in appendices A and B of part 60 of 699
chapter 1 of title 14 of the Code of Federal Regulations. 700

(51) Any transfer or lease of tangible personal property 701
between the state and JobsOhio in accordance with section 702
4313.02 of the Revised Code. 703

(52) (a) Sales to a qualifying corporation. 704

(b) As used in division (B) (52) of this section: 705

(i) "Qualifying corporation" means a nonprofit corporation 706
organized in this state that leases from an eligible county 707
land, buildings, structures, fixtures, and improvements to the 708
land that are part of or used in a public recreational facility 709
used by a major league professional athletic team or a class A 710
to class AAA minor league affiliate of a major league 711
professional athletic team for a significant portion of the 712
team's home schedule, provided the following apply: 713

(I) The facility is leased from the eligible county 714
pursuant to a lease that requires substantially all of the 715
revenue from the operation of the business or activity conducted 716
by the nonprofit corporation at the facility in excess of 717
operating costs, capital expenditures, and reserves to be paid 718
to the eligible county at least once per calendar year. 719

(II) Upon dissolution and liquidation of the nonprofit 720
corporation, all of its net assets are distributable to the 721
board of commissioners of the eligible county from which the 722
corporation leases the facility. 723

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| (ii) "Eligible county" has the same meaning as in section 307.695 of the Revised Code. | 724 725 |
| (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. | 726 727 728 729 730 731 732 733 734 735 |
| (54) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any bullion described in section 408(m) (3) (B) of the Internal Revenue Code, regardless of whether that bullion is in the physical possession of a trustee. "Investment coin" means any coin composed primarily of gold, silver, platinum, or palladium. | 736 737 738 739 740 741 |
| (55) 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: | 742 743 744 |
| (a) Accepts direct payments to operate; | 745 |
| (b) Automatically plays a selected digital audio work for a single play upon receipt of a payment described in division (B) (55) (a) of this section; | 746 747 748 |
| (c) Operates exclusively for the purpose of playing digital audio works in a commercial establishment. | 749 750 |
| (56) (a) Sales of the following occurring on the first Friday of August and the following Saturday and Sunday of each | 751 752 |

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| year, beginning in 2018: | 753 |
| (i) An item of clothing, <u>school supplies, or school</u> | 754 |
| <u>instructional material, the price of which is seventy-five-one</u> | 755 |
| <u>hundred dollars or less;</u> | 756 |
| (ii) An item of school supplies, the price of which is | 757 |
| twenty dollars or less; | 758 |
| (iii) An item of school instructional material A laptop, | 759 |
| <u>netbook, or tablet computer, the price of which is twenty-two</u> | 760 |
| <u>thousand dollars or less.</u> | 761 |
| (b) As used in division (B) (56) of this section: | 762 |
| (i) "Clothing" means all human wearing apparel suitable | 763 |
| for general use. "Clothing" includes, but is not limited to, | 764 |
| aprons, household and shop; athletic supporters; baby receiving | 765 |
| blankets; bathing suits and caps; beach capes and coats; belts | 766 |
| and suspenders; boots; coats and jackets; costumes; diapers, | 767 |
| children and adult, including disposable diapers; earmuffs; | 768 |
| footlets; formal wear; garters and garter belts; girdles; gloves | 769 |
| and mittens for general use; hats and caps; hosiery; insoles for | 770 |
| shoes; lab coats; neckties; overshoes; pantyhose; rainwear; | 771 |
| rubber pants; sandals; scarves; shoes and shoe laces; slippers; | 772 |
| sneakers; socks and stockings; steel-toed shoes; underwear; | 773 |
| uniforms, athletic and nonathletic; and wedding apparel. | 774 |
| "Clothing" does not include items purchased for use in a trade | 775 |
| or business; clothing accessories or equipment; protective | 776 |
| equipment; sports or recreational equipment; belt buckles sold | 777 |
| separately; costume masks sold separately; patches and emblems | 778 |
| sold separately; sewing equipment and supplies including, but | 779 |
| not limited to, knitting needles, patterns, pins, scissors, | 780 |
| sewing machines, sewing needles, tape measures, and thimbles; | 781 |

and sewing materials that become part of "clothing" including, 782
but not limited to, buttons, fabric, lace, thread, yarn, and 783
zippers. 784

(ii) "School supplies" means items commonly used by a 785
student in a course of study. "School supplies" includes only 786
the following items: binders; book bags; calculators; cellophane 787
tape; blackboard chalk; compasses; composition books; crayons; 788
erasers; folders, expandable, pocket, plastic, and manila; glue, 789
paste, and paste sticks; highlighters; index cards; index card 790
boxes; legal pads; lunch boxes; markers; notebooks; paper, 791
loose-leaf ruled notebook paper, copy paper, graph paper, 792
tracing paper, manila paper, colored paper, poster board, and 793
construction paper; pencil boxes and other school supply boxes; 794
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 795
and writing tablets. "School supplies" does not include any item 796
purchased for use in a trade or business. 797

(iii) "School instructional material" means written 798
material commonly used by a student in a course of study as a 799
reference and to learn the subject being taught. "School 800
instructional material" includes only the following items: 801
reference books, reference maps and globes, textbooks, and 802
workbooks. "School instructional material" does not include any 803
material purchased for use in a trade or business. 804

(iv) "Laptop, netbook, or tablet computer" does not 805
include a desktop computer, a cellular telephone, a personal 806
digital assistant, or an electronic reader. 807

(57) Sales of tangible personal property that is not 808
required to be registered or licensed under the laws of this 809
state to a citizen of a foreign nation that is not a citizen of 810
the United States, provided the property is delivered to a 811

person in this state that is not a related member of the 812
purchaser, is physically present in this state for the sole 813
purpose of temporary storage and package consolidation, and is 814
subsequently delivered to the purchaser at a delivery address in 815
a foreign nation. As used in division (B)(56) of this section, 816
"related member" has the same meaning as in section 5733.042 of 817
the Revised Code, and "temporary storage" means the storage of 818
tangible personal property for a period of not more than sixty 819
days. 820

(C) For the purpose of the proper administration of this 821
chapter, and to prevent the evasion of the tax, it is presumed 822
that all sales made in this state are subject to the tax until 823
the contrary is established. 824

(D) The levy of this tax on retail sales of recreation and 825
sports club service shall not prevent a municipal corporation 826
from levying any tax on recreation and sports club dues or on 827
any income generated by recreation and sports club dues. 828

(E) The tax collected by the vendor from the consumer 829
under this chapter is not part of the price, but is a tax 830
collection for the benefit of the state, and of counties levying 831
an additional sales tax pursuant to section 5739.021 or 5739.026 832
of the Revised Code and of transit authorities levying an 833
additional sales tax pursuant to section 5739.023 of the Revised 834
Code. Except for the discount authorized under section 5739.12 835
of the Revised Code and the effects of any rounding pursuant to 836
section 5703.055 of the Revised Code, no person other than the 837
state or such a county or transit authority shall derive any 838
benefit from the collection or payment of the tax levied by this 839
section or section 5739.021, 5739.023, or 5739.026 of the 840
Revised Code. 841

Section 2. That existing section 5739.02 of the Revised Code is hereby repealed. 842
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