

**As Reported by the House Ways and Means Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 268**

**Representative Jordan**

**Cosponsors: Representatives Stoltzfus, Merrin, Lipps, Riedel, Roemer, Plummer,  
Seitz, Gross, McClain, Wiggam, Young, T.**

---

**A BILL**

To amend section 5739.02 of the Revised Code to 1  
exempt from sales and use taxes the sale of 2  
investment metal bullion and coins. 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) (a) Sales of motor fuel upon receipt, use, 80  
distribution, or sale of which in this state a tax is imposed by 81  
the law of this state, but this exemption shall not apply to the 82  
sale of motor fuel on which a refund of the tax is allowable 83  
under division (A) of section 5735.14 of the Revised Code; and 84  
the tax commissioner may deduct the amount of tax levied by this 85  
section applicable to the price of motor fuel when granting a 86  
refund of motor fuel tax pursuant to division (A) of section 87  
5735.14 of the Revised Code and shall cause the amount deducted 88  
to be paid into the general revenue fund of this state; 89

(b) Sales of motor fuel other than that described in 90  
division (B) (6) (a) of this section and used for powering a 91  
refrigeration unit on a vehicle other than one used primarily to 92  
provide comfort to the operator or occupants of the vehicle. 93

(7) Sales of natural gas by a natural gas company or 94  
municipal gas utility, of water by a water-works company, or of 95  
steam by a heating company, if in each case the thing sold is 96  
delivered to consumers through pipes or conduits, and all sales 97  
of communications services by a telegraph company, all terms as 98  
defined in section 5727.01 of the Revised Code, and sales of 99  
electricity delivered through wires; 100

(8) Casual sales by a person, or auctioneer employed 101  
directly by the person to conduct such sales, except as to such 102  
sales of motor vehicles, watercraft or outboard motors required 103  
to be titled under section 1548.06 of the Revised Code, 104  
watercraft documented with the United States coast guard, 105  
snowmobiles, and all-purpose vehicles as defined in section 106

4519.01 of the Revised Code;	107
(9) (a) Sales of services or tangible personal property,	108
other than motor vehicles, mobile homes, and manufactured homes,	109
by churches, organizations exempt from taxation under section	110
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit	111
organizations operated exclusively for charitable purposes as	112
defined in division (B) (12) of this section, provided that the	113
number of days on which such tangible personal property or	114
services, other than items never subject to the tax, are sold	115
does not exceed six in any calendar year, except as otherwise	116
provided in division (B) (9) (b) of this section. If the number of	117
days on which such sales are made exceeds six in any calendar	118
year, the church or organization shall be considered to be	119
engaged in business and all subsequent sales by it shall be	120
subject to the tax. In counting the number of days, all sales by	121
groups within a church or within an organization shall be	122
considered to be sales of that church or organization.	123
(b) The limitation on the number of days on which tax-	124
exempt sales may be made by a church or organization under	125
division (B) (9) (a) of this section does not apply to sales made	126
by student clubs and other groups of students of a primary or	127
secondary school, or a parent-teacher association, booster	128
group, or similar organization that raises money to support or	129
fund curricular or extracurricular activities of a primary or	130
secondary school.	131
(c) Divisions (B) (9) (a) and (b) of this section do not	132
apply to sales by a noncommercial educational radio or	133
television broadcasting station.	134
(10) Sales not within the taxing power of this state under	135
the Constitution or laws of the United States or the	136

Constitution of this state;	137
(11) Except for transactions that are sales under division	138
(B) (3) (r) of section 5739.01 of the Revised Code, the	139
transportation of persons or property, unless the transportation	140
is by a private investigation and security service;	141
(12) Sales of tangible personal property or services to	142
churches, to organizations exempt from taxation under section	143
501(c) (3) of the Internal Revenue Code of 1986, and to any other	144
nonprofit organizations operated exclusively for charitable	145
purposes in this state, no part of the net income of which	146
inures to the benefit of any private shareholder or individual,	147
and no substantial part of the activities of which consists of	148
carrying on propaganda or otherwise attempting to influence	149
legislation; sales to offices administering one or more homes	150
for the aged or one or more hospital facilities exempt under	151
section 140.08 of the Revised Code; and sales to organizations	152
described in division (D) of section 5709.12 of the Revised	153
Code.	154
"Charitable purposes" means the relief of poverty; the	155
improvement of health through the alleviation of illness,	156
disease, or injury; the operation of an organization exclusively	157
for the provision of professional, laundry, printing, and	158
purchasing services to hospitals or charitable institutions; the	159
operation of a home for the aged, as defined in section 5701.13	160
of the Revised Code; the operation of a radio or television	161
broadcasting station that is licensed by the federal	162
communications commission as a noncommercial educational radio	163
or television station; the operation of a nonprofit animal	164
adoption service or a county humane society; the promotion of	165
education by an institution of learning that maintains a faculty	166

of qualified instructors, teaches regular continuous courses of 167  
study, and confers a recognized diploma upon completion of a 168  
specific curriculum; the operation of a parent-teacher 169  
association, booster group, or similar organization primarily 170  
engaged in the promotion and support of the curricular or 171  
extracurricular activities of a primary or secondary school; the 172  
operation of a community or area center in which presentations 173  
in music, dramatics, the arts, and related fields are made in 174  
order to foster public interest and education therein; the 175  
production of performances in music, dramatics, and the arts; or 176  
the promotion of education by an organization engaged in 177  
carrying on research in, or the dissemination of, scientific and 178  
technological knowledge and information primarily for the 179  
public. 180

Nothing in this division shall be deemed to exempt sales 181  
to any organization for use in the operation or carrying on of a 182  
trade or business, or sales to a home for the aged for use in 183  
the operation of independent living facilities as defined in 184  
division (A) of section 5709.12 of the Revised Code. 185

(13) Building and construction materials and services sold 186  
to construction contractors for incorporation into a structure 187  
or improvement to real property under a construction contract 188  
with this state or a political subdivision of this state, or 189  
with the United States government or any of its agencies; 190  
building and construction materials and services sold to 191  
construction contractors for incorporation into a structure or 192  
improvement to real property that are accepted for ownership by 193  
this state or any of its political subdivisions, or by the 194  
United States government or any of its agencies at the time of 195  
completion of the structures or improvements; building and 196  
construction materials sold to construction contractors for 197

incorporation into a horticulture structure or livestock	198
structure for a person engaged in the business of horticulture	199
or producing livestock; building materials and services sold to	200
a construction contractor for incorporation into a house of	201
public worship or religious education, or a building used	202
exclusively for charitable purposes under a construction	203
contract with an organization whose purpose is as described in	204
division (B) (12) of this section; building materials and	205
services sold to a construction contractor for incorporation	206
into a building under a construction contract with an	207
organization exempt from taxation under section 501(c) (3) of the	208
Internal Revenue Code of 1986 when the building is to be used	209
exclusively for the organization's exempt purposes; building and	210
construction materials sold for incorporation into the original	211
construction of a sports facility under section 307.696 of the	212
Revised Code; building and construction materials and services	213
sold to a construction contractor for incorporation into real	214
property outside this state if such materials and services, when	215
sold to a construction contractor in the state in which the real	216
property is located for incorporation into real property in that	217
state, would be exempt from a tax on sales levied by that state;	218
building and construction materials for incorporation into a	219
transportation facility pursuant to a public-private agreement	220
entered into under sections 5501.70 to 5501.83 of the Revised	221
Code; and, until one calendar year after the construction of a	222
convention center that qualifies for property tax exemption	223
under section 5709.084 of the Revised Code is completed,	224
building and construction materials and services sold to a	225
construction contractor for incorporation into the real property	226
comprising that convention center;	227
(14) Sales of ships or vessels or rail rolling stock used	228

or to be used principally in interstate or foreign commerce, and 229  
repairs, alterations, fuel, and lubricants for such ships or 230  
vessels or rail rolling stock; 231

(15) Sales to persons primarily engaged in any of the 232  
activities mentioned in division (B)(42)(a), (g), or (h) of this 233  
section, to persons engaged in making retail sales, or to 234  
persons who purchase for sale from a manufacturer tangible 235  
personal property that was produced by the manufacturer in 236  
accordance with specific designs provided by the purchaser, of 237  
packages, including material, labels, and parts for packages, 238  
and of machinery, equipment, and material for use primarily in 239  
packaging tangible personal property produced for sale, 240  
including any machinery, equipment, and supplies used to make 241  
labels or packages, to prepare packages or products for 242  
labeling, or to label packages or products, by or on the order 243  
of the person doing the packaging, or sold at retail. "Packages" 244  
includes bags, baskets, cartons, crates, boxes, cans, bottles, 245  
bindings, wrappings, and other similar devices and containers, 246  
but does not include motor vehicles or bulk tanks, trailers, or 247  
similar devices attached to motor vehicles. "Packaging" means 248  
placing in a package. Division (B)(15) of this section does not 249  
apply to persons engaged in highway transportation for hire. 250

(16) Sales of food to persons using supplemental nutrition 251  
assistance program benefits to purchase the food. As used in 252  
this division, "food" has the same meaning as in 7 U.S.C. 2012 253  
and federal regulations adopted pursuant to the Food and 254  
Nutrition Act of 2008. 255

(17) Sales to persons engaged in farming, agriculture, 256  
horticulture, or floriculture, of tangible personal property for 257  
use or consumption primarily in the production by farming, 258

agriculture, horticulture, or floriculture of other tangible 259  
personal property for use or consumption primarily in the 260  
production of tangible personal property for sale by farming, 261  
agriculture, horticulture, or floriculture; or material and 262  
parts for incorporation into any such tangible personal property 263  
for use or consumption in production; and of tangible personal 264  
property for such use or consumption in the conditioning or 265  
holding of products produced by and for such use, consumption, 266  
or sale by persons engaged in farming, agriculture, 267  
horticulture, or floriculture, except where such property is 268  
incorporated into real property; 269

(18) Sales of drugs for a human being that may be 270  
dispensed only pursuant to a prescription; insulin as recognized 271  
in the official United States pharmacopoeia; urine and blood 272  
testing materials when used by diabetics or persons with 273  
hypoglycemia to test for glucose or acetone; hypodermic syringes 274  
and needles when used by diabetics for insulin injections; 275  
epoetin alfa when purchased for use in the treatment of persons 276  
with medical disease; hospital beds when purchased by hospitals, 277  
nursing homes, or other medical facilities; and medical oxygen 278  
and medical oxygen-dispensing equipment when purchased by 279  
hospitals, nursing homes, or other medical facilities; 280

(19) Sales of prosthetic devices, durable medical 281  
equipment for home use, or mobility enhancing equipment, when 282  
made pursuant to a prescription and when such devices or 283  
equipment are for use by a human being. 284

(20) Sales of emergency and fire protection vehicles and 285  
equipment to nonprofit organizations for use solely in providing 286  
fire protection and emergency services, including trauma care 287  
and emergency medical services, for political subdivisions of 288

the state;	289
(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;	290 291 292 293 294 295 296
(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;	297 298 299 300 301
(23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;	302 303 304
(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling	305 306 307 308 309 310 311 312 313 314 315 316 317 318

materials, and "packaging" means placing therein.	319
(25) (a) Sales of water to a consumer for residential use;	320
(b) Sales of water by a nonprofit corporation engaged	321
exclusively in the treatment, distribution, and sale of water to	322
consumers, if such water is delivered to consumers through pipes	323
or tubing.	324
(26) Fees charged for inspection or reinspection of motor	325
vehicles under section 3704.14 of the Revised Code;	326
(27) Sales to persons licensed to conduct a food service	327
operation pursuant to section 3717.43 of the Revised Code, of	328
tangible personal property primarily used directly for the	329
following:	330
(a) To prepare food for human consumption for sale;	331
(b) To preserve food that has been or will be prepared for	332
human consumption for sale by the food service operator, not	333
including tangible personal property used to display food for	334
selection by the consumer;	335
(c) To clean tangible personal property used to prepare or	336
serve food for human consumption for sale.	337
(28) Sales of animals by nonprofit animal adoption	338
services or county humane societies;	339
(29) Sales of services to a corporation described in	340
division (A) of section 5709.72 of the Revised Code, and sales	341
of tangible personal property that qualifies for exemption from	342
taxation under section 5709.72 of the Revised Code;	343
(30) Sales and installation of agricultural land tile, as	344
defined in division (B) (5) (a) of section 5739.01 of the Revised	345

Code;	346
(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;	347 348 349
(32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;	350 351 352 353 354 355
(33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;	356 357 358 359 360
(34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B) (42) (a) or (n) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.	361 362 363 364 365 366 367 368 369 370 371 372 373 374 375

(35) (a) Sales where the purpose of the consumer is to use 376  
or consume the things transferred in making retail sales and 377  
consisting of newspaper inserts, catalogues, coupons, flyers, 378  
gift certificates, or other advertising material that prices and 379  
describes tangible personal property offered for retail sale. 380

(b) Sales to direct marketing vendors of preliminary 381  
materials such as photographs, artwork, and typesetting that 382  
will be used in printing advertising material; and of printed 383  
matter that offers free merchandise or chances to win sweepstake 384  
prizes and that is mailed to potential customers with 385  
advertising material described in division (B) (35) (a) of this 386  
section; 387

(c) Sales of equipment such as telephones, computers, 388  
facsimile machines, and similar tangible personal property 389  
primarily used to accept orders for direct marketing retail 390  
sales. 391

(d) Sales of automatic food vending machines that preserve 392  
food with a shelf life of forty-five days or less by 393  
refrigeration and dispense it to the consumer. 394

For purposes of division (B) (35) of this section, "direct 395  
marketing" means the method of selling where consumers order 396  
tangible personal property by United States mail, delivery 397  
service, or telecommunication and the vendor delivers or ships 398  
the tangible personal property sold to the consumer from a 399  
warehouse, catalogue distribution center, or similar fulfillment 400  
facility by means of the United States mail, delivery service, 401  
or common carrier. 402

(36) Sales to a person engaged in the business of 403  
horticulture or producing livestock of materials to be 404

incorporated into a horticulture structure or livestock structure; 405  
406

(37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students; 407  
408  
409  
410  
411  
412

(38) Sales of tangible personal property that is not required to be registered or licensed under the laws of this state to a citizen of a foreign nation that is not a citizen of the United States, provided the property is delivered to a person in this state that is not a related member of the purchaser, is physically present in this state for the sole purpose of temporary storage and package consolidation, and is subsequently delivered to the purchaser at a delivery address in a foreign nation. As used in division (B)(38) of this section, "related member" has the same meaning as in section 5733.042 of the Revised Code, and "temporary storage" means the storage of tangible personal property for a period of not more than sixty days. 413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425

(39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000; 426  
427  
428

(40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its 429  
430  
431  
432  
433  
434

classification as tangible personal property after 435  
incorporation; fuel or power used in the production, 436  
transmission, or distribution of electricity; energy conversion 437  
equipment as defined in section 5727.01 of the Revised Code; and 438  
tangible personal property and services used in the repair and 439  
maintenance of the production, transmission, or distribution 440  
system, including only those motor vehicles as are specially 441  
designed and equipped for such use. The exemption provided in 442  
this division shall be in lieu of all other exemptions in 443  
division (B) (42) (a) or (n) of this section to which a provider 444  
of electricity may otherwise be entitled based on the use of the 445  
tangible personal property or service purchased in generating, 446  
transmitting, or distributing electricity. 447

(41) Sales to a person providing services under division 448  
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 449  
personal property and services used directly and primarily in 450  
providing taxable services under that section. 451

(42) Sales where the purpose of the purchaser is to do any 452  
of the following: 453

(a) To incorporate the thing transferred as a material or 454  
a part into tangible personal property to be produced for sale 455  
by manufacturing, assembling, processing, or refining; or to use 456  
or consume the thing transferred directly in producing tangible 457  
personal property for sale by mining, including, without 458  
limitation, the extraction from the earth of all substances that 459  
are classed geologically as minerals, or directly in the 460  
rendition of a public utility service, except that the sales tax 461  
levied by this section shall be collected upon all meals, 462  
drinks, and food for human consumption sold when transporting 463  
persons. This paragraph does not exempt from "retail sale" or 464

"sales at retail" the sale of tangible personal property that is	465
to be incorporated into a structure or improvement to real	466
property.	467
(b) To hold the thing transferred as security for the	468
performance of an obligation of the vendor;	469
(c) To resell, hold, use, or consume the thing transferred	470
as evidence of a contract of insurance;	471
(d) To use or consume the thing directly in commercial	472
fishing;	473
(e) To incorporate the thing transferred as a material or	474
a part into, or to use or consume the thing transferred directly	475
in the production of, magazines distributed as controlled	476
circulation publications;	477
(f) To use or consume the thing transferred in the	478
production and preparation in suitable condition for market and	479
sale of printed, imprinted, overprinted, lithographic,	480
multilithic, blueprinted, photostatic, or other productions or	481
reproductions of written or graphic matter;	482
(g) To use the thing transferred, as described in section	483
5739.011 of the Revised Code, primarily in a manufacturing	484
operation to produce tangible personal property for sale;	485
(h) To use the benefit of a warranty, maintenance or	486
service contract, or similar agreement, as described in division	487
(B) (7) of section 5739.01 of the Revised Code, to repair or	488
maintain tangible personal property, if all of the property that	489
is the subject of the warranty, contract, or agreement would not	490
be subject to the tax imposed by this section;	491
(i) To use the thing transferred as qualified research and	492

development equipment;	493
(j) To use or consume the thing transferred primarily in	494
storing, transporting, mailing, or otherwise handling purchased	495
sales inventory in a warehouse, distribution center, or similar	496
facility when the inventory is primarily distributed outside	497
this state to retail stores of the person who owns or controls	498
the warehouse, distribution center, or similar facility, to	499
retail stores of an affiliated group of which that person is a	500
member, or by means of direct marketing. This division does not	501
apply to motor vehicles registered for operation on the public	502
highways. As used in this division, "affiliated group" has the	503
same meaning as in division (B) (3) (e) of section 5739.01 of the	504
Revised Code and "direct marketing" has the same meaning as in	505
division (B) (35) of this section.	506
(k) To use or consume the thing transferred to fulfill a	507
contractual obligation incurred by a warrantor pursuant to a	508
warranty provided as a part of the price of the tangible	509
personal property sold or by a vendor of a warranty, maintenance	510
or service contract, or similar agreement the provision of which	511
is defined as a sale under division (B) (7) of section 5739.01 of	512
the Revised Code;	513
(l) To use or consume the thing transferred in the	514
production of a newspaper for distribution to the public;	515
(m) To use tangible personal property to perform a service	516
listed in division (B) (3) of section 5739.01 of the Revised	517
Code, if the property is or is to be permanently transferred to	518
the consumer of the service as an integral part of the	519
performance of the service;	520
(n) To use or consume the thing transferred primarily in	521

producing tangible personal property for sale by farming, 522  
agriculture, horticulture, or floriculture. Persons engaged in 523  
rendering farming, agriculture, horticulture, or floriculture 524  
services for others are deemed engaged primarily in farming, 525  
agriculture, horticulture, or floriculture. This paragraph does 526  
not exempt from "retail sale" or "sales at retail" the sale of 527  
tangible personal property that is to be incorporated into a 528  
structure or improvement to real property. 529

(o) To use or consume the thing transferred in acquiring, 530  
formatting, editing, storing, and disseminating data or 531  
information by electronic publishing; 532

(p) To provide the thing transferred to the owner or 533  
lessee of a motor vehicle that is being repaired or serviced, if 534  
the thing transferred is a rented motor vehicle and the 535  
purchaser is reimbursed for the cost of the rented motor vehicle 536  
by a manufacturer, warrantor, or provider of a maintenance, 537  
service, or other similar contract or agreement, with respect to 538  
the motor vehicle that is being repaired or serviced; 539

(q) To use or consume the thing transferred directly in 540  
production of crude oil and natural gas for sale. Persons 541  
engaged in rendering production services for others are deemed 542  
engaged in production. 543

As used in division (B) (42) (q) of this section, 544  
"production" means operations and tangible personal property 545  
directly used to expose and evaluate an underground reservoir 546  
that may contain hydrocarbon resources, prepare the wellbore for 547  
production, and lift and control all substances yielded by the 548  
reservoir to the surface of the earth. 549

(i) For the purposes of division (B) (42) (q) of this 550

section, the "thing transferred" includes, but is not limited	551
to, any of the following:	552
(I) Services provided in the construction of permanent	553
access roads, services provided in the construction of the well	554
site, and services provided in the construction of temporary	555
impoundments;	556
(II) Equipment and rigging used for the specific purpose	557
of creating with integrity a wellbore pathway to underground	558
reservoirs;	559
(III) Drilling and workover services used to work within a	560
subsurface wellbore, and tangible personal property directly	561
used in providing such services;	562
(IV) Casing, tubulars, and float and centralizing	563
equipment;	564
(V) Trailers to which production equipment is attached;	565
(VI) Well completion services, including cementing of	566
casing, and tangible personal property directly used in	567
providing such services;	568
(VII) Wireline evaluation, mud logging, and perforation	569
services, and tangible personal property directly used in	570
providing such services;	571
(VIII) Reservoir stimulation, hydraulic fracturing, and	572
acidizing services, and tangible personal property directly used	573
in providing such services, including all material pumped	574
downhole;	575
(IX) Pressure pumping equipment;	576
(X) Artificial lift systems equipment;	577

(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	578 579 580
(XII) Tangible personal property directly used to control production equipment.	581 582
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	583 584 585
(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;	586 587 588
(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;	589 590 591
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	592 593 594
(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;	595 596 597 598
(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;	599 600 601 602
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	603 604
(VII) Well site fencing, lighting, or security systems;	605

(VIII) Communication devices or services;	606
(IX) Office supplies;	607
(X) Trailers used as offices or lodging;	608
(XI) Motor vehicles of any kind;	609
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	610 611
(XIII) Tangible personal property used primarily as a safety device;	612 613
(XIV) Data collection or monitoring devices;	614
(XV) Access ladders, stairs, or platforms attached to storage tanks.	615 616
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.	617 618 619 620 621
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.	622 623 624 625
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.	626 627 628
(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	629 630 631 632

in washing, cleaning, or waxing a motor vehicle, provided no 633  
other personal property or personal service is provided as part 634  
of the transaction. 635

(44) Sales of replacement and modification parts for 636  
engines, airframes, instruments, and interiors in, and paint 637  
for, aircraft used primarily in a fractional aircraft ownership 638  
program, and sales of services for the repair, modification, and 639  
maintenance of such aircraft, and machinery, equipment, and 640  
supplies primarily used to provide those services. 641

(45) Sales of telecommunications service that is used 642  
directly and primarily to perform the functions of a call 643  
center. As used in this division, "call center" means any 644  
physical location where telephone calls are placed or received 645  
in high volume for the purpose of making sales, marketing, 646  
customer service, technical support, or other specialized 647  
business activity, and that employs at least fifty individuals 648  
that engage in call center activities on a full-time basis, or 649  
sufficient individuals to fill fifty full-time equivalent 650  
positions. 651

(46) Sales by a telecommunications service vendor of 900 652  
service to a subscriber. This division does not apply to 653  
information services. 654

(47) Sales of value-added non-voice data service. This 655  
division does not apply to any similar service that is not 656  
otherwise a telecommunications service. 657

(48) Sales of feminine hygiene products. 658

(49) Sales of materials, parts, equipment, or engines used 659  
in the repair or maintenance of aircraft or avionics systems of 660  
such aircraft, and sales of repair, remodeling, replacement, or 661

maintenance services in this state performed on aircraft or on 662  
an aircraft's avionics, engine, or component materials or parts. 663  
As used in division (B) (49) of this section, "aircraft" means 664  
aircraft of more than six thousand pounds maximum certified 665  
takeoff weight or used exclusively in general aviation. 666

(50) Sales of full flight simulators that are used for 667  
pilot or flight-crew training, sales of repair or replacement 668  
parts or components, and sales of repair or maintenance services 669  
for such full flight simulators. "Full flight simulator" means a 670  
replica of a specific type, or make, model, and series of 671  
aircraft cockpit. It includes the assemblage of equipment and 672  
computer programs necessary to represent aircraft operations in 673  
ground and flight conditions, a visual system providing an out- 674  
of-the-cockpit view, and a system that provides cues at least 675  
equivalent to those of a three-degree-of-freedom motion system, 676  
and has the full range of capabilities of the systems installed 677  
in the device as described in appendices A and B of part 60 of 678  
chapter 1 of title 14 of the Code of Federal Regulations. 679

(51) Any transfer or lease of tangible personal property 680  
between the state and JobsOhio in accordance with section 681  
4313.02 of the Revised Code. 682

(52) (a) Sales to a qualifying corporation. 683

(b) As used in division (B) (52) of this section: 684

(i) "Qualifying corporation" means a nonprofit corporation 685  
organized in this state that leases from an eligible county 686  
land, buildings, structures, fixtures, and improvements to the 687  
land that are part of or used in a public recreational facility 688  
used by a major league professional athletic team or a class A 689  
to class AAA minor league affiliate of a major league 690

professional athletic team for a significant portion of the 691  
team's home schedule, provided the following apply: 692

(I) The facility is leased from the eligible county 693  
pursuant to a lease that requires substantially all of the 694  
revenue from the operation of the business or activity conducted 695  
by the nonprofit corporation at the facility in excess of 696  
operating costs, capital expenditures, and reserves to be paid 697  
to the eligible county at least once per calendar year. 698

(II) Upon dissolution and liquidation of the nonprofit 699  
corporation, all of its net assets are distributable to the 700  
board of commissioners of the eligible county from which the 701  
corporation leases the facility. 702

(ii) "Eligible county" has the same meaning as in section 703  
307.695 of the Revised Code. 704

(53) Sales to or by a cable service provider, video 705  
service provider, or radio or television broadcast station 706  
regulated by the federal government of cable service or 707  
programming, video service or programming, audio service or 708  
programming, or electronically transferred digital audiovisual 709  
or audio work. As used in division (B) (53) of this section, 710  
"cable service" and "cable service provider" have the same 711  
meanings as in section 1332.01 of the Revised Code, and "video 712  
service," "video service provider," and "video programming" have 713  
the same meanings as in section 1332.21 of the Revised Code. 714

(54) Sales of a digital audio work electronically 715  
transferred for delivery through use of a machine, such as a 716  
juke box, that does all of the following: 717

(a) Accepts direct payments to operate; 718

(b) Automatically plays a selected digital audio work for 719

a single play upon receipt of a payment described in division	720
(B) (54) (a) of this section;	721
(c) Operates exclusively for the purpose of playing	722
digital audio works in a commercial establishment.	723
(55) (a) Sales of the following occurring on the first	724
Friday of August and the following Saturday and Sunday of each	725
year, beginning in 2018:	726
(i) An item of clothing, the price of which is seventy-	727
five dollars or less;	728
(ii) An item of school supplies, the price of which is	729
twenty dollars or less;	730
(iii) An item of school instructional material, the price	731
of which is twenty dollars or less.	732
(b) As used in division (B) (55) of this section:	733
(i) "Clothing" means all human wearing apparel suitable	734
for general use. "Clothing" includes, but is not limited to,	735
aprons, household and shop; athletic supporters; baby receiving	736
blankets; bathing suits and caps; beach capes and coats; belts	737
and suspenders; boots; coats and jackets; costumes; diapers,	738
children and adult, including disposable diapers; earmuffs;	739
footlets; formal wear; garters and garter belts; girdles; gloves	740
and mittens for general use; hats and caps; hosiery; insoles for	741
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	742
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	743
sneakers; socks and stockings; steel-toed shoes; underwear;	744
uniforms, athletic and nonathletic; and wedding apparel.	745
"Clothing" does not include items purchased for use in a trade	746
or business; clothing accessories or equipment; protective	747
equipment; sports or recreational equipment; belt buckles sold	748

separately; costume masks sold separately; patches and emblems 749  
sold separately; sewing equipment and supplies including, but 750  
not limited to, knitting needles, patterns, pins, scissors, 751  
sewing machines, sewing needles, tape measures, and thimbles; 752  
and sewing materials that become part of "clothing" including, 753  
but not limited to, buttons, fabric, lace, thread, yarn, and 754  
zippers. 755

(ii) "School supplies" means items commonly used by a 756  
student in a course of study. "School supplies" includes only 757  
the following items: binders; book bags; calculators; cellophane 758  
tape; blackboard chalk; compasses; composition books; crayons; 759  
erasers; folders, expandable, pocket, plastic, and manila; glue, 760  
paste, and paste sticks; highlighters; index cards; index card 761  
boxes; legal pads; lunch boxes; markers; notebooks; paper, 762  
loose-leaf ruled notebook paper, copy paper, graph paper, 763  
tracing paper, manila paper, colored paper, poster board, and 764  
construction paper; pencil boxes and other school supply boxes; 765  
pencil sharpeners; pencils; pens; protractors; rulers; scissors; 766  
and writing tablets. "School supplies" does not include any item 767  
purchased for use in a trade or business. 768

(iii) "School instructional material" means written 769  
material commonly used by a student in a course of study as a 770  
reference and to learn the subject being taught. "School 771  
instructional material" includes only the following items: 772  
reference books, reference maps and globes, textbooks, and 773  
workbooks. "School instructional material" does not include any 774  
material purchased for use in a trade or business. 775

(56) (a) Sales of diapers or incontinence underpads sold 776  
pursuant to a prescription, for the benefit of a medicaid 777  
recipient with a diagnosis of incontinence, and by a medicaid 778

provider that maintains a valid provider agreement under section 779  
5164.30 of the Revised Code with the department of medicaid, 780  
provided that the medicaid program covers diapers or 781  
incontinence underpads as an incontinence garment. 782

(b) As used in division (B) (56) (a) of this section: 783

(i) "Diaper" means an absorbent garment worn by humans who 784  
are incapable of, or have difficulty, controlling their bladder 785  
or bowel movements. 786

(ii) "Incontinence underpad" means an absorbent product, 787  
not worn on the body, designed to protect furniture or other 788  
tangible personal property from soiling or damage due to human 789  
incontinence. 790

(57) Sales of investment metal bullion and investment 791  
coins. "Investment metal bullion" means any bullion described in 792  
section 408(m) (3) (B) of the Internal Revenue Code, regardless of 793  
whether that bullion is in the physical possession of a trustee. 794  
"Investment coin" means any coin composed primarily of gold, 795  
silver, platinum, or palladium. 796

(C) For the purpose of the proper administration of this 797  
chapter, and to prevent the evasion of the tax, it is presumed 798  
that all sales made in this state are subject to the tax until 799  
the contrary is established. 800

(D) The tax collected by the vendor from the consumer 801  
under this chapter is not part of the price, but is a tax 802  
collection for the benefit of the state, and of counties levying 803  
an additional sales tax pursuant to section 5739.021 or 5739.026 804  
of the Revised Code and of transit authorities levying an 805  
additional sales tax pursuant to section 5739.023 of the Revised 806  
Code. Except for the discount authorized under section 5739.12 807

of the Revised Code and the effects of any rounding pursuant to 808  
section 5703.055 of the Revised Code, no person other than the 809  
state or such a county or transit authority shall derive any 810  
benefit from the collection or payment of the tax levied by this 811  
section or section 5739.021, 5739.023, or 5739.026 of the 812  
Revised Code. 813

**Section 2.** That existing section 5739.02 of the Revised 814  
Code is hereby repealed. 815

**Section 3.** The amendment by this act of section 5739.02 of 816  
the Revised Code applies on and after the first day of the first 817  
month beginning after the effective date of this section. 818