

As Reported by the House Ways and Means Committee

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H. B. No. 424

Representative Lear

**Cosponsors: Representatives Gross, Claggett, Barhorst, Klopfenstein, Dean,
Lorenz, Brennan, Hall**

A BILL

To amend sections 5739.01 and 5741.01 and to enact 1
section 5741.072 of the Revised Code to modify 2
the sales and use taxation of delivery network 3
services. 4

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

Section 1. That sections 5739.01 and 5741.01 be amended 5
and section 5741.072 of the Revised Code be enacted to read as 6
follows: 7

Sec. 5739.01. As used in this chapter: 8

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

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

(1) All transactions by which title or possession, or	18
both, of tangible personal property, is or is to be transferred,	19
or a license to use or consume tangible personal property is or	20
is to be granted;	21
(2) All transactions by which lodging by a hotel is or is	22
to be furnished to transient guests;	23
(3) All transactions by which:	24
(a) An item of tangible personal property is or is to be	25
repaired, except property, the purchase of which would not be	26
subject to the tax imposed by section 5739.02 of the Revised	27
Code;	28
(b) An item of tangible personal property is or is to be	29
installed, except property, the purchase of which would not be	30
subject to the tax imposed by section 5739.02 of the Revised	31
Code or property that is or is to be incorporated into and will	32
become a part of a production, transmission, transportation, or	33
distribution system for the delivery of a public utility	34
service;	35
(c) The service of washing, cleaning, waxing, polishing,	36
or painting a motor vehicle is or is to be furnished;	37
(d) Laundry and dry cleaning services are or are to be	38
provided;	39
(e) Automatic data processing, computer services, or	40
electronic information services are or are to be provided for	41
use in business when the true object of the transaction is the	42
receipt by the consumer of automatic data processing, computer	43
services, or electronic information services rather than the	44
receipt of personal or professional services to which automatic	45
data processing, computer services, or electronic information	46

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

(f) Telecommunications service, including prepaid calling 56
service, prepaid wireless calling service, or ancillary service, 57
is or is to be provided, but not including coin-operated 58
telephone service; 59

(g) Landscaping and lawn care service is or is to be 60
provided; 61

(h) Private investigation and security service is or is to 62
be provided; 63

(i) Information services or tangible personal property is 64
provided or ordered by means of a nine hundred telephone call; 65

(j) Building maintenance and janitorial service is or is 66
to be provided; 67

(k) Exterminating service is or is to be provided; 68

(l) Physical fitness facility service is or is to be 69
provided; 70

(m) Recreation and sports club service is or is to be 71
provided; 72

(n) Satellite broadcasting service is or is to be 73
provided; 74

(o) Personal care service is or is to be provided to an 75
individual. As used in this division, "personal care service" 76
includes skin care, the application of cosmetics, manicuring, 77
pedicuring, hair removal, tattooing, body piercing, tanning, 78
massage, and other similar services. "Personal care service" 79
does not include a service provided by or on the order of a 80
licensed physician or licensed chiropractor, or the cutting, 81
coloring, or styling of an individual's hair. 82

(p) The transportation of persons by motor vehicle or 83
aircraft is or is to be provided, when the transportation is 84
entirely within this state, except for transportation provided 85
by an ambulance service, by a transit bus, as defined in section 86
5735.01 of the Revised Code, and transportation provided by a 87
citizen of the United States holding a certificate of public 88
convenience and necessity issued under 49 U.S.C. 41102; 89

(q) Motor vehicle towing service is or is to be provided. 90
As used in this division, "motor vehicle towing service" means 91
the towing or conveyance of a wrecked, disabled, or illegally 92
parked motor vehicle. 93

(r) Snow removal service is or is to be provided. As used 94
in this division, "snow removal service" means the removal of 95
snow by any mechanized means, but does not include the providing 96
of such service by a person that has less than five thousand 97
dollars in sales of such service during the calendar year. 98

(s) Electronic publishing service is or is to be provided 99
to a consumer for use in business, except that such transactions 100
occurring between members of an affiliated group, as defined in 101
division (B) (3) (e) of this section, are not sales. 102

(4) All transactions by which printed, imprinted, 103

overprinted, lithographic, multilithic, blueprinted, 104
photostatic, or other productions or reproductions of written or 105
graphic matter are or are to be furnished or transferred; 106

(5) The production or fabrication of tangible personal 107
property for a consideration for consumers who furnish either 108
directly or indirectly the materials used in the production of 109
fabrication work; and include the furnishing, preparing, or 110
serving for a consideration of any tangible personal property 111
consumed on the premises of the person furnishing, preparing, or 112
serving such tangible personal property. Except as provided in 113
section 5739.03 of the Revised Code, a construction contract 114
pursuant to which tangible personal property is or is to be 115
incorporated into a structure or improvement on and becoming a 116
part of real property is not a sale of such tangible personal 117
property. The construction contractor is the consumer of such 118
tangible personal property, provided that the sale and 119
installation of carpeting, the sale and installation of 120
agricultural land tile, the sale and erection or installation of 121
portable grain bins, or the provision of landscaping and lawn 122
care service and the transfer of property as part of such 123
service is never a construction contract. 124

As used in division (B) (5) of this section: 125

(a) "Agricultural land tile" means fired clay or concrete 126
tile, or flexible or rigid perforated plastic pipe or tubing, 127
incorporated or to be incorporated into a subsurface drainage 128
system appurtenant to land used or to be used primarily in 129
production by farming, agriculture, horticulture, or 130
floriculture. The term does not include such materials when they 131
are or are to be incorporated into a drainage system appurtenant 132
to a building or structure even if the building or structure is 133

used or to be used in such production.	134
(b) "Portable grain bin" means a structure that is used or	135
to be used by a person engaged in farming or agriculture to	136
shelter the person's grain and that is designed to be	137
disassembled without significant damage to its component parts.	138
(6) All transactions in which all of the shares of stock	139
of a closely held corporation are transferred, or an ownership	140
interest in a pass-through entity, as defined in section 5733.04	141
of the Revised Code, is transferred, if the corporation or pass-	142
through entity is not engaging in business and its entire assets	143
consist of boats, planes, motor vehicles, or other tangible	144
personal property operated primarily for the use and enjoyment	145
of the shareholders or owners;	146
(7) All transactions in which a warranty, maintenance or	147
service contract, or similar agreement by which the vendor of	148
the warranty, contract, or agreement agrees to repair or	149
maintain the tangible personal property of the consumer is or is	150
to be provided;	151
(8) The transfer of copyrighted motion picture films used	152
solely for advertising purposes, except that the transfer of	153
such films for exhibition purposes is not a sale;	154
(9) All transactions by which tangible personal property	155
is or is to be stored, except such property that the consumer of	156
the storage holds for sale in the regular course of business;	157
(10) All transactions in which "guaranteed auto	158
protection" is provided whereby a person promises to pay to the	159
consumer the difference between the amount the consumer receives	160
from motor vehicle insurance and the amount the consumer owes to	161
a person holding title to or a lien on the consumer's motor	162

vehicle in the event the consumer's motor vehicle suffers a 163
total loss under the terms of the motor vehicle insurance policy 164
or is stolen and not recovered, if the protection and its price 165
are included in the purchase or lease agreement; 166

(11) (a) Except as provided in division (B) (11) (b) of this 167
section, all transactions by which health care services are paid 168
for, reimbursed, provided, delivered, arranged for, or otherwise 169
made available by a medicaid health insuring corporation 170
pursuant to the corporation's contract with the state. 171

(b) If the centers for medicare and medicaid services of 172
the United States department of health and human services 173
determines that the taxation of transactions described in 174
division (B) (11) (a) of this section constitutes an impermissible 175
health care-related tax under the "Social Security Act," section 176
1903(w), 42 U.S.C. 1396b(w), and regulations adopted thereunder, 177
the medicaid director shall notify the tax commissioner of that 178
determination. Beginning with the first day of the month 179
following that notification, the transactions described in 180
division (B) (11) (a) of this section are not sales for the 181
purposes of this chapter or Chapter 5741. of the Revised Code. 182
The tax commissioner shall order that the collection of taxes 183
under sections 5739.02, 5739.021, 5739.023, 5739.026, 5741.02, 184
5741.021, 5741.022, and 5741.023 of the Revised Code shall cease 185
for transactions occurring on or after that date. 186

(12) All transactions by which a specified digital product 187
is provided for permanent use or less than permanent use, 188
regardless of whether continued payment is required. 189

(13) All transactions by a delivery network company for 190
the company's delivery network services, provided the company 191
has a waiver issued under section 5741.072 of the Revised Code. 192

Except as provided in this section, "sale" and "selling" 193
do not include transfers of interest in leased property where 194
the original lessee and the terms of the original lease 195
agreement remain unchanged, or professional, insurance, or 196
personal service transactions that involve the transfer of 197
tangible personal property as an inconsequential element, for 198
which no separate charges are made. 199

(C) "Vendor" means the person providing the service or by 200
whom the transfer effected or license given by a sale is or is 201
to be made or given and, for sales described in division (B) (3) 202
(i) of this section, the telecommunications service vendor that 203
provides the nine hundred telephone service; if two or more 204
persons are engaged in business at the same place of business 205
under a single trade name in which all collections on account of 206
sales by each are made, such persons shall constitute a single 207
vendor. 208

Physicians, dentists, hospitals, and veterinarians who are 209
engaged in selling tangible personal property as received from 210
others, such as eyeglasses, mouthwashes, dentifrices, or similar 211
articles, are vendors. Veterinarians who are engaged in 212
transferring to others for a consideration drugs, the dispensing 213
of which does not require an order of a licensed veterinarian or 214
physician under federal law, are vendors. 215

The operator of any peer-to-peer car sharing program shall 216
be considered to be the vendor. 217

(D) (1) "Consumer" means the person for whom the service is 218
provided, to whom the transfer effected or license given by a 219
sale is or is to be made or given, to whom the service described 220
in division (B) (3) (f) or (i) of this section is charged, or to 221
whom the admission is granted. 222

(2) Physicians, dentists, hospitals, and blood banks 223
operated by nonprofit institutions and persons licensed to 224
practice veterinary medicine, surgery, and dentistry are 225
consumers of all tangible personal property and services 226
purchased by them in connection with the practice of medicine, 227
dentistry, the rendition of hospital or blood bank service, or 228
the practice of veterinary medicine, surgery, and dentistry. In 229
addition to being consumers of drugs administered by them or by 230
their assistants according to their direction, veterinarians 231
also are consumers of drugs that under federal law may be 232
dispensed only by or upon the order of a licensed veterinarian 233
or physician, when transferred by them to others for a 234
consideration to provide treatment to animals as directed by the 235
veterinarian. 236

(3) A person who performs a facility management, or 237
similar service contract for a contractee is a consumer of all 238
tangible personal property and services purchased for use in 239
connection with the performance of such contract, regardless of 240
whether title to any such property vests in the contractee. The 241
purchase of such property and services is not subject to the 242
exception for resale under division (E) of this section. 243

(4) (a) In the case of a person who purchases printed 244
matter for the purpose of distributing it or having it 245
distributed to the public or to a designated segment of the 246
public, free of charge, that person is the consumer of that 247
printed matter, and the purchase of that printed matter for that 248
purpose is a sale. 249

(b) In the case of a person who produces, rather than 250
purchases, printed matter for the purpose of distributing it or 251
having it distributed to the public or to a designated segment 252

of the public, free of charge, that person is the consumer of 253
all tangible personal property and services purchased for use or 254
consumption in the production of that printed matter. That 255
person is not entitled to claim exemption under division (B) (42) 256
(f) of section 5739.02 of the Revised Code for any material 257
incorporated into the printed matter or any equipment, supplies, 258
or services primarily used to produce the printed matter. 259

(c) The distribution of printed matter to the public or to 260
a designated segment of the public, free of charge, is not a 261
sale to the members of the public to whom the printed matter is 262
distributed or to any persons who purchase space in the printed 263
matter for advertising or other purposes. 264

(5) A person who makes sales of any of the services listed 265
in division (B) (3) of this section is the consumer of any 266
tangible personal property used in performing the service. The 267
purchase of that property is not subject to the resale exception 268
under division (E) of this section. 269

(6) A person who engages in highway transportation for 270
hire is the consumer of all packaging materials purchased by 271
that person and used in performing the service, except for 272
packaging materials sold by such person in a transaction 273
separate from the service. 274

(7) In the case of a transaction for health care services 275
under division (B) (11) of this section, a medicaid health 276
insuring corporation is the consumer of such services. The 277
purchase of such services by a medicaid health insuring 278
corporation is not subject to the exception for resale under 279
division (E) of this section or to the exemptions provided under 280
divisions (B) (12), (18), (19), and (22) of section 5739.02 of 281
the Revised Code. 282

(E) "Retail sale" and "sales at retail" include all sales, 283
except those in which the purpose of the consumer is to resell 284
the thing transferred or benefit of the service provided, by a 285
person engaging in business, in the form in which the same is, 286
or is to be, received by the person. 287

(F) "Business" includes any activity engaged in by any 288
person with the object of gain, benefit, or advantage, either 289
direct or indirect. "Business" does not include the activity of 290
a person in managing and investing the person's own funds. 291

(G) "Engaging in business" means commencing, conducting, 292
or continuing in business, and liquidating a business when the 293
liquidator thereof holds itself out to the public as conducting 294
such business. Making a casual sale is not engaging in business. 295

(H) (1) (a) "Price," except as provided in divisions (H) (2), 296
(3), and (4) of this section, means the total amount of 297
consideration, including cash, credit, property, and services, 298
for which tangible personal property or services are sold, 299
leased, or rented, valued in money, whether received in money or 300
otherwise, without any deduction for any of the following: 301

(i) The vendor's cost of the property sold; 302

(ii) The cost of materials used, labor or service costs, 303
interest, losses, all costs of transportation to the vendor, all 304
taxes imposed on the vendor, including the tax imposed under 305
Chapter 5751. of the Revised Code, and any other expense of the 306
vendor; 307

(iii) Charges by the vendor for any services necessary to 308
complete the sale; 309

(iv) Delivery charges. As used in this division, "delivery 310
charges" means charges by the vendor for preparation and 311

delivery to a location designated by the consumer of tangible 312
personal property or a service, including transportation, 313
shipping, postage, handling, crating, and packing. 314

(v) Installation charges; 315

(vi) Credit for any trade-in. 316

(b) "Price" includes consideration received by the vendor 317
from a third party, if the vendor actually receives the 318
consideration from a party other than the consumer, and the 319
consideration is directly related to a price reduction or 320
discount on the sale; the vendor has an obligation to pass the 321
price reduction or discount through to the consumer; the amount 322
of the consideration attributable to the sale is fixed and 323
determinable by the vendor at the time of the sale of the item 324
to the consumer; and one of the following criteria is met: 325

(i) The consumer presents a coupon, certificate, or other 326
document to the vendor to claim a price reduction or discount 327
where the coupon, certificate, or document is authorized, 328
distributed, or granted by a third party with the understanding 329
that the third party will reimburse any vendor to whom the 330
coupon, certificate, or document is presented; 331

(ii) The consumer identifies the consumer's self to the 332
seller as a member of a group or organization entitled to a 333
price reduction or discount. A preferred customer card that is 334
available to any patron does not constitute membership in such a 335
group or organization. 336

(iii) The price reduction or discount is identified as a 337
third party price reduction or discount on the invoice received 338
by the consumer, or on a coupon, certificate, or other document 339
presented by the consumer. 340

(c) "Price" does not include any of the following:	341
(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a vendor and taken by a consumer on a sale;	342 343 344
(ii) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;	345 346 347 348
(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer. For the purpose of this division, the tax imposed under Chapter 5751. of the Revised Code is not a tax directly on the consumer, even if the tax or a portion thereof is separately stated.	349 350 351 352 353 354
(iv) Notwithstanding divisions (H) (1) (b) (i) to (iii) of this section, any discount allowed by an automobile manufacturer to its employee, or to the employee of a supplier, on the purchase of a new motor vehicle from a new motor vehicle dealer in this state.	355 356 357 358 359
(v) The dollar value of a gift card that is not sold by a vendor or purchased by a consumer and that is redeemed by the consumer in purchasing tangible personal property or services if the vendor is not reimbursed and does not receive compensation from a third party to cover all or part of the gift card value. For the purposes of this division, a gift card is not sold by a vendor or purchased by a consumer if it is distributed pursuant to an awards, loyalty, or promotional program. Past and present purchases of tangible personal property or services by the consumer shall not be treated as consideration exchanged for a	360 361 362 363 364 365 366 367 368 369

gift card. 370

(2) In the case of a sale of any new motor vehicle by a 371
new motor vehicle dealer, as defined in section 4517.01 of the 372
Revised Code, in which another motor vehicle is accepted by the 373
dealer as part of the consideration received, "price" has the 374
same meaning as in division (H)(1) of this section, reduced by 375
the credit afforded the consumer by the dealer for the motor 376
vehicle received in trade. 377

(3) In the case of a sale of any watercraft or outboard 378
motor by a watercraft dealer licensed in accordance with section 379
1547.543 of the Revised Code, in which another watercraft, 380
watercraft and trailer, or outboard motor is accepted by the 381
dealer as part of the consideration received, "price" has the 382
same meaning as in division (H)(1) of this section, reduced by 383
the credit afforded the consumer by the dealer for the 384
watercraft, watercraft and trailer, or outboard motor received 385
in trade. As used in this division, "watercraft" includes an 386
outdrive unit attached to the watercraft. 387

(4) In the case of transactions for health care services 388
under division (B)(11) of this section, "price" means the amount 389
of managed care premiums received each month by a medicaid 390
health insuring corporation. 391

(I) "Receipts" means the total amount of the prices of the 392
sales of vendors, provided that the dollar value of gift cards 393
distributed pursuant to an awards, loyalty, or promotional 394
program, and cash discounts allowed and taken on sales at the 395
time they are consummated are not included, minus any amount 396
deducted as a bad debt pursuant to section 5739.121 of the 397
Revised Code. "Receipts" does not include the sale price of 398
property returned or services rejected by consumers when the 399

full sale price and tax are refunded either in cash or by 400
credit. 401

(J) "Place of business" means any location at which a 402
person engages in business. 403

(K) "Premises" includes any real property or portion 404
thereof upon which any person engages in selling tangible 405
personal property at retail or making retail sales and also 406
includes any real property or portion thereof designated for, or 407
devoted to, use in conjunction with the business engaged in by 408
such person. 409

(L) "Casual sale" means a sale of an item of tangible 410
personal property that was obtained by the person making the 411
sale, through purchase or otherwise, for the person's own use 412
and was previously subject to any state's taxing jurisdiction on 413
its sale or use, and includes such items acquired for the 414
seller's use that are sold by an auctioneer employed directly by 415
the person for such purpose, provided the location of such sales 416
is not the auctioneer's permanent place of business. As used in 417
this division, "permanent place of business" includes any 418
location where such auctioneer has conducted more than two 419
auctions during the year. 420

(M) "Hotel" means every establishment kept, used, 421
maintained, advertised, or held out to the public to be a place 422
where sleeping accommodations are offered to guests, in which 423
five or more rooms are used for the accommodation of such 424
guests, whether the rooms are in one or several structures, 425
except as otherwise provided in section 5739.091 of the Revised 426
Code. 427

(N) "Transient guests" means persons occupying a room or 428

rooms for sleeping accommodations for less than thirty 429
consecutive days. 430

(O) "Making retail sales" means the effecting of 431
transactions wherein one party is obligated to pay the price and 432
the other party is obligated to provide a service or to transfer 433
title to or possession of the item sold. "Making retail sales" 434
does not include the preliminary acts of promoting or soliciting 435
the retail sales, other than the distribution of printed matter 436
which displays or describes and prices the item offered for 437
sale, nor does it include delivery of a predetermined quantity 438
of tangible personal property or transportation of property or 439
personnel to or from a place where a service is performed. 440

(P) "Used directly in the rendition of a public utility 441
service" means that property that is to be incorporated into and 442
will become a part of the consumer's production, transmission, 443
transportation, or distribution system and that retains its 444
classification as tangible personal property after such 445
incorporation; fuel or power used in the production, 446
transmission, transportation, or distribution system; and 447
tangible personal property used in the repair and maintenance of 448
the production, transmission, transportation, or distribution 449
system, including only such motor vehicles as are specially 450
designed and equipped for such use. Tangible personal property 451
and services used primarily in providing highway transportation 452
for hire are not used directly in the rendition of a public 453
utility service. In this definition, "public utility" includes a 454
citizen of the United States holding, and required to hold, a 455
certificate of public convenience and necessity issued under 49 456
U.S.C. 41102. 457

(Q) "Refining" means removing or separating a desirable 458

product from raw or contaminated materials by distillation or 459
physical, mechanical, or chemical processes. 460

(R) "Assembly" and "assembling" mean attaching or fitting 461
together parts to form a product, but do not include packaging a 462
product. 463

(S) "Manufacturing operation" means a process in which 464
materials are changed, converted, or transformed into a 465
different state or form from which they previously existed and 466
includes refining materials, assembling parts, and preparing raw 467
materials and parts by mixing, measuring, blending, or otherwise 468
committing such materials or parts to the manufacturing process. 469
"Manufacturing operation" does not include packaging. 470

(T) "Fiscal officer" means, with respect to a regional 471
transit authority, the secretary-treasurer thereof, and with 472
respect to a county that is a transit authority, the fiscal 473
officer of the county transit board if one is appointed pursuant 474
to section 306.03 of the Revised Code or the county auditor if 475
the board of county commissioners operates the county transit 476
system. 477

(U) "Transit authority" means a regional transit authority 478
created pursuant to section 306.31 of the Revised Code or a 479
county in which a county transit system is created pursuant to 480
section 306.01 of the Revised Code. For the purposes of this 481
chapter, a transit authority must extend to at least the entire 482
area of a single county. A transit authority that includes 483
territory in more than one county must include all the area of 484
the most populous county that is a part of such transit 485
authority. County population shall be measured by the most 486
recent census taken by the United States census bureau. 487

(V) "Legislative authority" means, with respect to a 488
regional transit authority, the board of trustees thereof, and 489
with respect to a county that is a transit authority, the board 490
of county commissioners. 491

(W) "Territory of the transit authority" means all of the 492
area included within the territorial boundaries of a transit 493
authority as they from time to time exist. Such territorial 494
boundaries must at all times include all the area of a single 495
county or all the area of the most populous county that is a 496
part of such transit authority. County population shall be 497
measured by the most recent census taken by the United States 498
census bureau. 499

(X) "Providing a service" means providing or furnishing 500
anything described in division (B) (3) of this section for 501
consideration. 502

(Y) (1) (a) "Automatic data processing" means processing of 503
others' data, including keypunching or similar data entry 504
services together with verification thereof, or providing access 505
to computer equipment for the purpose of processing data. 506

(b) "Computer services" means providing services 507
consisting of specifying computer hardware configurations and 508
evaluating technical processing characteristics, computer 509
programming, and training of computer programmers and operators, 510
provided in conjunction with and to support the sale, lease, or 511
operation of taxable computer equipment or systems. 512

(c) "Electronic information services" means providing 513
access to computer equipment by means of telecommunications 514
equipment for the purpose of either of the following: 515

(i) Examining or acquiring data stored in or accessible to 516

the computer equipment;	517
(ii) Placing data into the computer equipment to be	518
retrieved by designated recipients with access to the computer	519
equipment.	520
"Electronic information services" does not include	521
electronic publishing.	522
(d) "Automatic data processing, computer services, or	523
electronic information services" shall not include personal or	524
professional services.	525
(2) As used in divisions (B) (3) (e) and (Y) (1) of this	526
section, "personal and professional services" means all services	527
other than automatic data processing, computer services, or	528
electronic information services, including but not limited to:	529
(a) Accounting and legal services such as advice on tax	530
matters, asset management, budgetary matters, quality control,	531
information security, and auditing and any other situation where	532
the service provider receives data or information and studies,	533
alters, analyzes, interprets, or adjusts such material;	534
(b) Analyzing business policies and procedures;	535
(c) Identifying management information needs;	536
(d) Feasibility studies, including economic and technical	537
analysis of existing or potential computer hardware or software	538
needs and alternatives;	539
(e) Designing policies, procedures, and custom software	540
for collecting business information, and determining how data	541
should be summarized, sequenced, formatted, processed,	542
controlled, and reported so that it will be meaningful to	543
management;	544

(f) Developing policies and procedures that document how business events and transactions are to be authorized, executed, and controlled;	545 546 547
(g) Testing of business procedures;	548
(h) Training personnel in business procedure applications;	549
(i) Providing credit information to users of such information by a consumer reporting agency, as defined in the "Fair Credit Reporting Act," 84 Stat. 1114, 1129 (1970), 15 U.S.C. 1681a(f), or as hereafter amended, including but not limited to gathering, organizing, analyzing, recording, and furnishing such information by any oral, written, graphic, or electronic medium;	550 551 552 553 554 555 556
(j) Providing debt collection services by any oral, written, graphic, or electronic means;	557 558
(k) Providing digital advertising services;	559
(l) Providing services to electronically file any federal, state, or local individual income tax return, report, or other related document or schedule with a federal, state, or local government entity or to electronically remit a payment of any such individual income tax to such an entity. For the purpose of this division, "individual income tax" does not include federal, state, or local taxes withheld by an employer from an employee's compensation.	560 561 562 563 564 565 566 567
The services listed in divisions (Y) (2) (a) to (l) of this section are not automatic data processing or computer services.	568 569
(Z) "Highway transportation for hire" means the transportation of personal property belonging to others for consideration by any of the following:	570 571 572

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

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

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

"Highway transportation for hire" does not include delivery network services.

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

(a) Data processing and information services that allow 602
data to be generated, acquired, stored, processed, or retrieved 603
and delivered by an electronic transmission to a consumer where 604
the consumer's primary purpose for the underlying transaction is 605
the processed data or information; 606

(b) Installation or maintenance of wiring or equipment on 607
a customer's premises; 608

(c) Tangible personal property; 609

(d) Advertising, including directory advertising; 610

(e) Billing and collection services provided to third 611
parties; 612

(f) Internet access service; 613

(g) Radio and television audio and video programming 614
services, regardless of the medium, including the furnishing of 615
transmission, conveyance, and routing of such services by the 616
programming service provider. Radio and television audio and 617
video programming services include, but are not limited to, 618
cable service, as defined in 47 U.S.C. 522(6), and audio and 619
video programming services delivered by commercial mobile radio 620
service providers, as defined in 47 C.F.R. 20.3; 621

(h) Ancillary service; 622

(i) Digital products delivered electronically, including 623
software, music, video, reading materials, or ring tones. 624

(2) "Ancillary service" means a service that is associated 625
with or incidental to the provision of telecommunications 626
service, including conference bridging service, detailed 627
telecommunications billing service, directory assistance, 628
vertical service, and voice mail service. As used in this 629

division: 630

(a) "Conference bridging service" means an ancillary 631
service that links two or more participants of an audio or video 632
conference call, including providing a telephone number. 633
"Conference bridging service" does not include 634
telecommunications services used to reach the conference bridge. 635

(b) "Detailed telecommunications billing service" means an 636
ancillary service of separately stating information pertaining 637
to individual calls on a customer's billing statement. 638

(c) "Directory assistance" means an ancillary service of 639
providing telephone number or address information. 640

(d) "Vertical service" means an ancillary service that is 641
offered in connection with one or more telecommunications 642
services, which offers advanced calling features that allow 643
customers to identify callers and manage multiple calls and call 644
connections, including conference bridging service. 645

(e) "Voice mail service" means an ancillary service that 646
enables the customer to store, send, or receive recorded 647
messages. "Voice mail service" does not include any vertical 648
services that the customer may be required to have in order to 649
utilize the voice mail service. 650

(3) "900 service" means an inbound toll telecommunications 651
service purchased by a subscriber that allows the subscriber's 652
customers to call in to the subscriber's prerecorded 653
announcement or live service, and which is typically marketed 654
under the name "900 service" and any subsequent numbers 655
designated by the federal communications commission. "900 656
service" does not include the charge for collection services 657
provided by the seller of the telecommunications service to the 658

subscriber, or services or products sold by the subscriber to 659
the subscriber's customer. 660

(4) "Prepaid calling service" means the right to access 661
exclusively telecommunications services, which must be paid for 662
in advance and which enables the origination of calls using an 663
access number or authorization code, whether manually or 664
electronically dialed, and that is sold in predetermined units 665
or dollars of which the number declines with use in a known 666
amount. 667

(5) "Prepaid wireless calling service" means a 668
telecommunications service that provides the right to utilize 669
mobile telecommunications service as well as other non- 670
telecommunications services, including the download of digital 671
products delivered electronically, and content and ancillary 672
services, that must be paid for in advance and that is sold in 673
predetermined units or dollars of which the number declines with 674
use in a known amount. 675

(6) "Value-added non-voice data service" means a 676
telecommunications service in which computer processing 677
applications are used to act on the form, content, code, or 678
protocol of the information or data primarily for a purpose 679
other than transmission, conveyance, or routing. 680

(7) "Coin-operated telephone service" means a 681
telecommunications service paid for by inserting money into a 682
telephone accepting direct deposits of money to operate. 683

(8) "Customer" has the same meaning as in section 5739.034 684
of the Revised Code. 685

(BB) "Laundry and dry cleaning services" means removing 686
soil or dirt from towels, linens, articles of clothing, or other 687

fabric items that belong to others and supplying towels, linens, 688
articles of clothing, or other fabric items. "Laundry and dry 689
cleaning services" does not include the provision of self- 690
service facilities for use by consumers to remove soil or dirt 691
from towels, linens, articles of clothing, or other fabric 692
items. 693

(CC) "Magazines distributed as controlled circulation 694
publications" means magazines containing at least twenty-four 695
pages, at least twenty-five per cent editorial content, issued 696
at regular intervals four or more times a year, and circulated 697
without charge to the recipient, provided that such magazines 698
are not owned or controlled by individuals or business concerns 699
which conduct such publications as an auxiliary to, and 700
essentially for the advancement of the main business or calling 701
of, those who own or control them. 702

(DD) "Landscaping and lawn care service" means the 703
services of planting, seeding, sodding, removing, cutting, 704
trimming, pruning, mulching, aerating, applying chemicals, 705
watering, fertilizing, and providing similar services to 706
establish, promote, or control the growth of trees, shrubs, 707
flowers, grass, ground cover, and other flora, or otherwise 708
maintaining a lawn or landscape grown or maintained by the owner 709
for ornamentation or other nonagricultural purpose. However, 710
"landscaping and lawn care service" does not include the 711
providing of such services by a person who has less than five 712
thousand dollars in sales of such services during the calendar 713
year. 714

(EE) "Private investigation and security service" means 715
the performance of any activity for which the provider of such 716
service is required to be licensed pursuant to Chapter 4749. of 717

the Revised Code, or would be required to be so licensed in 718
performing such services in this state, and also includes the 719
services of conducting polygraph examinations and of monitoring 720
or overseeing the activities on or in, or the condition of, the 721
consumer's home, business, or other facility by means of 722
electronic or similar monitoring devices. "Private investigation 723
and security service" does not include special duty services 724
provided by off-duty police officers, deputy sheriffs, and other 725
peace officers regularly employed by the state or a political 726
subdivision. 727

(FF) "Information services" means providing conversation, 728
giving consultation or advice, playing or making a voice or 729
other recording, making or keeping a record of the number of 730
callers, and any other service provided to a consumer by means 731
of a nine hundred telephone call, except when the nine hundred 732
telephone call is the means by which the consumer makes a 733
contribution to a recognized charity. 734

(GG) "Research and development" means designing, creating, 735
or formulating new or enhanced products, equipment, or 736
manufacturing processes, and also means conducting scientific or 737
technological inquiry and experimentation in the physical 738
sciences with the goal of increasing scientific knowledge which 739
may reveal the bases for new or enhanced products, equipment, or 740
manufacturing processes. 741

(HH) "Qualified research and development equipment" means 742
either of the following: 743

(1) Capitalized tangible personal property, and leased 744
personal property that would be capitalized if purchased, used 745
by a person primarily to perform research and development; 746

(2) Any tangible personal property used by a megaproject operator primarily to perform research and development at the site of a megaproject that satisfies the criteria described in division (A) (11) (a) (ii) of section 122.17 of the Revised Code during the period that the megaproject operator has an agreement for such megaproject with the tax credit authority under division (D) of that section that remains in effect and has not expired or been terminated.

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

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

(JJ) "Exterminating service" means eradicating or attempting to eradicate vermin infestations from a building or

structure, or the area surrounding a building or structure, and 777
includes activities to inspect, detect, or prevent vermin 778
infestation of a building or structure. 779

(KK) "Physical fitness facility service" means all 780
transactions by which a membership is granted, maintained, or 781
renewed, including initiation fees, membership dues, renewal 782
fees, monthly minimum fees, and other similar fees and dues, by 783
a physical fitness facility such as an athletic club, health 784
spa, or gymnasium, which entitles the member to use the facility 785
for physical exercise. 786

(LL) "Recreation and sports club service" means all 787
transactions by which a membership is granted, maintained, or 788
renewed, including initiation fees, membership dues, renewal 789
fees, monthly minimum fees, and other similar fees and dues, by 790
a recreation and sports club, which entitles the member to use 791
the facilities of the organization. "Recreation and sports club" 792
means an organization that has ownership of, or controls or 793
leases on a continuing, long-term basis, the facilities used by 794
its members and includes an aviation club, gun or shooting club, 795
yacht club, card club, swimming club, tennis club, golf club, 796
country club, riding club, amateur sports club, or similar 797
organization. 798

(MM) "Livestock" means farm animals commonly raised for 799
food, food production, or other agricultural purposes, 800
including, but not limited to, cattle, sheep, goats, swine, 801
poultry, and captive deer. "Livestock" does not include 802
invertebrates, amphibians, reptiles, domestic pets, animals for 803
use in laboratories or for exhibition, or other animals not 804
commonly raised for food or food production. 805

(NN) "Livestock structure" means a building or structure 806

used exclusively for the housing, raising, feeding, or 807
sheltering of livestock, and includes feed storage or handling 808
structures and structures for livestock waste handling. 809

(OO) "Horticulture" means the growing, cultivation, and 810
production of flowers, fruits, herbs, vegetables, sod, 811
mushrooms, and nursery stock. As used in this division, "nursery 812
stock" has the same meaning as in section 927.51 of the Revised 813
Code. 814

(PP) "Horticulture structure" means a building or 815
structure used exclusively for the commercial growing, raising, 816
or overwintering of horticultural products, and includes the 817
area used for stocking, storing, and packing horticultural 818
products when done in conjunction with the production of those 819
products. 820

(QQ) "Newspaper" means an unbound publication bearing a 821
title or name that is regularly published, at least as 822
frequently as biweekly, and distributed from a fixed place of 823
business to the public in a specific geographic area, and that 824
contains a substantial amount of news matter of international, 825
national, or local events of interest to the general public. 826

(RR) (1) "Feminine hygiene products" means tampons, panty 827
liners, menstrual cups, sanitary napkins, and other similar 828
tangible personal property designed for feminine hygiene in 829
connection with the human menstrual cycle, but does not include 830
grooming and hygiene products. 831

(2) "Grooming and hygiene products" means soaps and 832
cleaning solutions, shampoo, toothpaste, mouthwash, 833
antiperspirants, and sun tan lotions and screens, regardless of 834
whether any of these products are over-the-counter drugs. 835

(3) "Over-the-counter drugs" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, which label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

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

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

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

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

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

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

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

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

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

(WW) "Tangible personal property" means personal property 894
that can be seen, weighed, measured, felt, or touched, or that 895
is in any other manner perceptible to the senses. For purposes 896
of this chapter and Chapter 5741. of the Revised Code, "tangible 897
personal property" includes motor vehicles, electricity, water, 898
gas, steam, and prewritten computer software. 899

(XX) "Municipal gas utility" means a municipal corporation 900
that owns or operates a system for the distribution of natural 901
gas. 902

(YY) "Computer" means an electronic device that accepts 903
information in digital or similar form and manipulates it for a 904
result based on a sequence of instructions. 905

(ZZ) "Computer software" means a set of coded instructions 906
designed to cause a computer or automatic data processing 907
equipment to perform a task. 908

(AAA) "Delivered electronically" means delivery of 909
computer software from the seller to the purchaser by means 910
other than tangible storage media. 911

(BBB) "Prewritten computer software" means computer 912
software, including prewritten upgrades, that is not designed 913
and developed by the author or other creator to the 914
specifications of a specific purchaser. The combining of two or 915
more prewritten computer software programs or prewritten 916
portions thereof does not cause the combination to be other than 917
prewritten computer software. "Prewritten computer software" 918
includes software designed and developed by the author or other 919
creator to the specifications of a specific purchaser when it is 920
sold to a person other than the purchaser. If a person modifies 921
or enhances computer software of which the person is not the 922

author or creator, the person shall be deemed to be the author 923
or creator only of such person's modifications or enhancements. 924
Prewritten computer software or a prewritten portion thereof 925
that is modified or enhanced to any degree, where such 926
modification or enhancement is designed and developed to the 927
specifications of a specific purchaser, remains prewritten 928
computer software; provided, however, that where there is a 929
reasonable, separately stated charge or an invoice or other 930
statement of the price given to the purchaser for the 931
modification or enhancement, the modification or enhancement 932
shall not constitute prewritten computer software. 933

(CCC) (1) "Food" means substances, whether in liquid, 934
concentrated, solid, frozen, dried, or dehydrated form, that are 935
sold for ingestion or chewing by humans and are consumed for 936
their taste or nutritional value. "Food" does not include 937
alcoholic beverages, dietary supplements, soft drinks, or 938
tobacco. 939

(2) As used in division (CCC) (1) of this section: 940

(a) "Dietary supplements" means any product, other than 941
tobacco, that is intended to supplement the diet and that is 942
intended for ingestion in tablet, capsule, powder, softgel, 943
gelcap, or liquid form, or, if not intended for ingestion in 944
such a form, is not represented as conventional food for use as 945
a sole item of a meal or of the diet; that is required to be 946
labeled as a dietary supplement, identifiable by the "supplement 947
facts" box found on the label, as required by 21 C.F.R. 101.36; 948
and that contains one or more of the following dietary 949
ingredients: 950

(i) A vitamin; 951

(ii) A mineral;	952
(iii) An herb or other botanical;	953
(iv) An amino acid;	954
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake;	955 956
(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in divisions (CCC) (2) (a) (i) to (v) of this section.	957 958 959
(b) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or that contains greater than fifty per cent vegetable or fruit juice by volume.	960 961 962 963 964
(DDD) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food, dietary supplements, or alcoholic beverages that is recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplements to them; is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or is intended to affect the structure or any function of the body.	965 966 967 968 969 970 971 972 973
(EEE) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue a prescription.	974 975 976 977
(FFF) "Durable medical equipment" means equipment, including repair and replacement parts for such equipment, that	978 979

can withstand repeated use, is primarily and customarily used to 980
serve a medical purpose, generally is not useful to a person in 981
the absence of illness or injury, and is not worn in or on the 982
body. "Durable medical equipment" does not include mobility 983
enhancing equipment. 984

(GGG) "Mobility enhancing equipment" means equipment, 985
including repair and replacement parts for such equipment, that 986
is primarily and customarily used to provide or increase the 987
ability to move from one place to another and is appropriate for 988
use either in a home or a motor vehicle, that is not generally 989
used by persons with normal mobility, and that does not include 990
any motor vehicle or equipment on a motor vehicle normally 991
provided by a motor vehicle manufacturer. "Mobility enhancing 992
equipment" does not include durable medical equipment. 993

(HHH) "Prosthetic device" means a replacement, corrective, 994
or supportive device, including repair and replacement parts for 995
the device, worn on or in the human body to artificially replace 996
a missing portion of the body, prevent or correct physical 997
deformity or malfunction, or support a weak or deformed portion 998
of the body. As used in this division, before July 1, 2019, 999
"prosthetic device" does not include corrective eyeglasses, 1000
contact lenses, or dental prosthesis. On or after July 1, 2019, 1001
"prosthetic device" does not include dental prosthesis but does 1002
include corrective eyeglasses or contact lenses. 1003

(III) (1) "Fractional aircraft ownership program" means a 1004
program in which persons within an affiliated group sell and 1005
manage fractional ownership program aircraft, provided that at 1006
least one hundred airworthy aircraft are operated in the program 1007
and the program meets all of the following criteria: 1008

(a) Management services are provided by at least one 1009

program manager within an affiliated group on behalf of the 1010
fractional owners. 1011

(b) Each program aircraft is owned or possessed by at 1012
least one fractional owner. 1013

(c) Each fractional owner owns or possesses at least a 1014
one-sixteenth interest in at least one fixed-wing program 1015
aircraft. 1016

(d) A dry-lease aircraft interchange arrangement is in 1017
effect among all of the fractional owners. 1018

(e) Multi-year program agreements are in effect regarding 1019
the fractional ownership, management services, and dry-lease 1020
aircraft interchange arrangement aspects of the program. 1021

(2) As used in division (III)(1) of this section: 1022

(a) "Affiliated group" has the same meaning as in division 1023
(B)(3)(e) of this section. 1024

(b) "Fractional owner" means a person that owns or 1025
possesses at least a one-sixteenth interest in a program 1026
aircraft and has entered into the agreements described in 1027
division (III)(1)(e) of this section. 1028

(c) "Fractional ownership program aircraft" or "program 1029
aircraft" means a turbojet aircraft that is owned or possessed 1030
by a fractional owner and that has been included in a dry-lease 1031
aircraft interchange arrangement and agreement under divisions 1032
(III)(1)(d) and (e) of this section, or an aircraft a program 1033
manager owns or possesses primarily for use in a fractional 1034
aircraft ownership program. 1035

(d) "Management services" means administrative and 1036
aviation support services furnished under a fractional aircraft 1037

ownership program in accordance with a management services 1038
agreement under division (III) (1) (e) of this section, and 1039
offered by the program manager to the fractional owners, 1040
including, at a minimum, the establishment and implementation of 1041
safety guidelines; the coordination of the scheduling of the 1042
program aircraft and crews; program aircraft maintenance; 1043
program aircraft insurance; crew training for crews employed, 1044
furnished, or contracted by the program manager or the 1045
fractional owner; the satisfaction of record-keeping 1046
requirements; and the development and use of an operations 1047
manual and a maintenance manual for the fractional aircraft 1048
ownership program. 1049

(e) "Program manager" means the person that offers 1050
management services to fractional owners pursuant to a 1051
management services agreement under division (III) (1) (e) of this 1052
section. 1053

(JJJ) "Electronic publishing" means providing access to 1054
one or more of the following primarily for business customers, 1055
including the federal government or a state government or a 1056
political subdivision thereof, to conduct research: news; 1057
business, financial, legal, consumer, or credit materials; 1058
editorials, columns, reader commentary, or features; photos or 1059
images; archival or research material; legal notices, identity 1060
verification, or public records; scientific, educational, 1061
instructional, technical, professional, trade, or other literary 1062
materials; or other similar information which has been gathered 1063
and made available by the provider to the consumer in an 1064
electronic format. Providing electronic publishing includes the 1065
functions necessary for the acquisition, formatting, editing, 1066
storage, and dissemination of data or information that is the 1067
subject of a sale. 1068

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

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

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

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

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

As used in division (OOO) of this section:

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

(2) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds, including digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(3) "Digital book" means a work that is generally	1098
recognized in the ordinary and usual sense as a book.	1099
(4) "Electronically transferred" means obtained by the	1100
purchaser by means other than tangible storage media.	1101
(PPP) "Digital advertising services" means providing	1102
access, by means of telecommunications equipment, to computer	1103
equipment that is used to enter, upload, download, review,	1104
manipulate, store, add, or delete data for the purpose of	1105
electronically displaying, delivering, placing, or transferring	1106
promotional advertisements to potential customers about products	1107
or services or about industry or business brands.	1108
(QQQ) "Peer-to-peer car sharing program" has the same	1109
meaning as in section 4516.01 of the Revised Code.	1110
(RRR) "Megaproject" and "megaproject operator" have the	1111
same meanings as in section 122.17 of the Revised Code.	1112
(SSS) (1) "Diaper" means an absorbent garment worn by	1113
humans who are incapable of, or have difficulty, controlling	1114
their bladder or bowel movements.	1115
(2) "Children's diaper" means a diaper marketed to be worn	1116
by children.	1117
(3) "Adult diaper" means a diaper other than a children's	1118
diaper.	1119
(TTT) "Sales tax holiday" means three or more dates on	1120
which sales of all eligible tangible personal property are	1121
exempt from the taxes levied under sections 5739.02, 5739.021,	1122
5739.023, 5739.026, 5741.02, 5741.021, 5741.022, and 5741.023 of	1123
the Revised Code.	1124
(UUU) "Eligible tangible personal property" means any item	1125

of tangible personal property that meets both of the following 1126
requirements: 1127

(1) The price of the item does not exceed five hundred 1128
dollars; 1129

(2) The item is not a watercraft or outboard motor 1130
required to be titled pursuant to Chapter 1548. of the Revised 1131
Code, a motor vehicle, an alcoholic beverage, tobacco, a vapor 1132
product as defined in section 5743.01 of the Revised Code, or an 1133
item that contains marijuana as defined in section 3796.01 of 1134
the Revised Code. 1135

(VVV) "Alcoholic beverages" means beverages that are 1136
suitable for human consumption and contain one-half of one per 1137
cent or more of alcohol by volume. 1138

(WWW) "Tobacco" means cigarettes, cigars, chewing or pipe 1139
tobacco, or any other item that contains tobacco. 1140

(XXX) (1) "Delivery network company" means a person that 1141
operates a business platform, including a web site or mobile 1142
application, to facilitate delivery network services. 1143

(2) "Delivery network courier" means an individual 1144
connected to a consumer through a delivery network company and 1145
who provides delivery network services to that consumer. 1146

(3) "Delivery network services" means both of the 1147
following when performed as part of a single transaction: 1148

(a) Pickup of a local product by a delivery network 1149
courier from a local merchant that is not under common ownership 1150
or control of the delivery network company through which the 1151
transaction was initiated, and which may include selection, 1152
collection, and purchase of the local product; 1153

(b) Delivery by the delivery network courier of that local product to a location designated by the consumer that is not more than seventy-five miles from the local merchant's place of business where the pickup described in division (XXX) (3) (a) of this section occurs. 1154
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(4) "Local merchant" means a person engaged in selling local products from a temporary or fixed place of business in this state, including a kitchen, restaurant, grocery store, retail store, or convenience store. 1159
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(5) "Local product" means any tangible personal property, including food, but excluding freight, mail, or a package to which postage is affixed. 1163
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Sec. 5741.01. As used in this chapter: 1166

(A) "Person" includes individuals, receivers, assignees, trustees in bankruptcy, estates, firms, partnerships, associations, joint-stock companies, joint ventures, clubs, societies, corporations, business trusts, governments, and combinations of individuals of any form. 1167
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(B) "Storage" means and includes any keeping or retention in this state for use or other consumption in this state. 1172
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(C) "Use" means and includes the exercise of any right or power incidental to the ownership of the thing used. A thing is also "used" in this state if its consumer gives or otherwise distributes it, without charge, to recipients in this state. 1174
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(D) "Purchase" means acquired or received for a consideration, whether such acquisition or receipt was effected by a transfer of title, or of possession, or of both, or a license to use or consume; whether such transfer was absolute or conditional, and by whatever means the transfer was effected; 1178
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and whether the consideration was money, credit, barter, or 1183
exchange. Purchase includes production, even though the article 1184
produced was used, stored, or consumed by the producer. The 1185
transfer of copyrighted motion picture films for exhibition 1186
purposes is not a purchase, except such films as are used solely 1187
for advertising purposes. 1188

(E) "Seller" means the person from whom a purchase is 1189
made, and includes every person engaged in this state or 1190
elsewhere in the business of selling tangible personal property 1191
or providing a service for storage, use, or other consumption or 1192
benefit in this state; and when, in the opinion of the tax 1193
commissioner, it is necessary for the efficient administration 1194
of this chapter, to regard any salesperson, representative, 1195
peddler, or canvasser as the agent of a dealer, distributor, 1196
supervisor, or employer under whom the person operates, or from 1197
whom the person obtains tangible personal property, sold by the 1198
person for storage, use, or other consumption in this state, 1199
irrespective of whether or not the person is making such sales 1200
on the person's own behalf, or on behalf of such dealer, 1201
distributor, supervisor, or employer, the commissioner may 1202
regard the person as such agent, and may regard such dealer, 1203
distributor, supervisor, or employer as the seller. ~~A~~ 1204

Except as provided in sections 5741.071 and 5747.072 of 1205
the Revised Code, a marketplace facilitator shall be treated as 1206
the "seller" with respect to all sales facilitated by the 1207
marketplace facilitator on behalf of one or more marketplace 1208
sellers on and after the first day of the first month that 1209
begins at least thirty days after the marketplace facilitator 1210
first has substantial nexus with this state. Otherwise, "seller" 1211
does not include any person to the extent the person provides a 1212
communications medium, such as, but not limited to, newspapers, 1213

magazines, radio, television, or cable television, by means of 1214
which sellers solicit purchases of their goods or services. 1215

(F) "Consumer" means any person who has purchased tangible 1216
personal property or has been provided a service for storage, 1217
use, or other consumption or benefit in this state. "Consumer" 1218
does not include a person who receives, without charge, tangible 1219
personal property or a service. 1220

A person who performs a facility management or similar 1221
service contract for a contractee is a consumer of all tangible 1222
personal property and services purchased for use in connection 1223
with the performance of such contract, regardless of whether 1224
title to any such property vests in the contractee. The purchase 1225
of such property and services is not subject to the exception 1226
for resale under division (E) of section 5739.01 of the Revised 1227
Code. 1228

(G) (1) "Price," except as provided in divisions (G) (2) to 1229
(6) of this section, has the same meaning as in division (H) (1) 1230
of section 5739.01 of the Revised Code. 1231

(2) In the case of watercraft, outboard motors, or new 1232
motor vehicles, "price" has the same meaning as in divisions (H) 1233
(2) and (3) of section 5739.01 of the Revised Code. 1234

(3) In the case of a nonresident business consumer that 1235
purchases and uses tangible personal property outside this state 1236
and subsequently temporarily stores, uses, or otherwise consumes 1237
such tangible personal property in the conduct of business in 1238
this state, the consumer or the tax commissioner may determine 1239
the price based on the value of the temporary storage, use, or 1240
other consumption, in lieu of determining the price pursuant to 1241
division (G) (1) of this section. A price determination made by 1242

the consumer is subject to review and redetermination by the 1243
commissioner. 1244

(4) In the case of tangible personal property held in this 1245
state as inventory for sale or lease, and that is temporarily 1246
stored, used, or otherwise consumed in a taxable manner, the 1247
price is the value of the temporary use. A price determination 1248
made by the consumer is subject to review and redetermination by 1249
the commissioner. 1250

(5) In the case of tangible personal property originally 1251
purchased and used by the consumer outside this state, and that 1252
becomes permanently stored, used, or otherwise consumed in this 1253
state more than six months after its acquisition by the 1254
consumer, the consumer or the commissioner may determine the 1255
price based on the current value of such tangible personal 1256
property, in lieu of determining the price pursuant to division 1257
(G) (1) of this section. A price determination made by the 1258
consumer is subject to review and redetermination by the 1259
commissioner. 1260

(6) If a consumer produces tangible personal property for 1261
sale and removes that property from inventory for the consumer's 1262
own use, the price is the produced cost of that tangible 1263
personal property. 1264

(H) "Nexus with this state" means that the seller engages 1265
in continuous and widespread solicitation of purchases from 1266
residents of this state or otherwise purposefully directs its 1267
business activities at residents of this state. 1268

(I) (1) "Substantial nexus with this state" means that the 1269
seller has sufficient contact with this state, in accordance 1270
with Section 8 of Article I of the Constitution of the United 1271

States, to allow the state to require the seller to collect and 1272
remit use tax on sales of tangible personal property or services 1273
made to consumers in this state. 1274

(2) "Substantial nexus with this state" is presumed to 1275
exist when the seller does any of the following: 1276

(a) Uses an office, distribution facility, warehouse, 1277
storage facility, or similar place of business within this 1278
state, whether operated by the seller or any other person, other 1279
than a common carrier acting in its capacity as a common 1280
carrier. 1281

(b) Regularly uses employees, agents, representatives, 1282
solicitors, installers, repairers, salespersons, or other 1283
persons in this state for the purpose of conducting the business 1284
of the seller or either to engage in a business with the same or 1285
a similar industry classification as the seller selling a 1286
similar product or line of products as the seller, or to use 1287
trademarks, service marks, or trade names in this state that are 1288
the same or substantially similar to those used by the seller. 1289

(c) Uses any person, other than a common carrier acting in 1290
its capacity as a common carrier, in this state for any of the 1291
following purposes: 1292

(i) Receiving or processing orders of the seller's goods 1293
or services; 1294

(ii) Using that person's employees or facilities in this 1295
state to advertise, promote, or facilitate sales by the seller 1296
to customers; 1297

(iii) Delivering, installing, assembling, or performing 1298
maintenance services for the seller's customers; 1299

(iv) Facilitating the seller's delivery of tangible personal property to customers in this state by allowing the seller's customers to pick up property sold by the seller at an office, distribution facility, warehouse, storage facility, or similar place of business.

(d) Makes regular deliveries of tangible personal property into this state by means other than common carrier.

(e) Has an affiliated person that has substantial nexus with this state.

(f) Owns tangible personal property that is rented or leased to a consumer in this state, or offers tangible personal property, on approval, to consumers in this state.

(g) Has gross receipts in excess of one hundred thousand dollars in the current or preceding calendar year from the sale of tangible personal property for storage, use, or consumption in this state or from providing services the benefit of which is realized in this state.

(h) Engages, in the current or preceding calendar year, in two hundred or more separate transactions selling tangible personal property for storage, use, or consumption in this state or providing services the benefit of which is realized in this state.

(3) A seller presumed to have substantial nexus with this state under divisions (I) (2) (a) to (f), (g), and (h) of this section may rebut that presumption by demonstrating that activities described in any of those divisions that are conducted by a person in this state on the seller's behalf are not significantly associated with the seller's ability to establish or maintain a market in this state for the seller's

sales. 1329

(4) A marketplace facilitator is presumed to have 1330
substantial nexus with this state if either of the following 1331
apply in the current or preceding calendar year: 1332

(a) The aggregate gross receipts derived from sales of 1333
tangible personal property for storage, use, or consumption in 1334
this state or services the benefit of which is realized in this 1335
state, including sales made by the marketplace facilitator on 1336
its own behalf and sales facilitated by the marketplace 1337
facilitator on behalf of one or more marketplace sellers, exceed 1338
one hundred thousand dollars; 1339

(b) The marketplace facilitator engages in on its own 1340
behalf, or facilitates on behalf of one or more marketplace 1341
sellers, two hundred or more separate transactions selling 1342
tangible personal property for storage, use, or consumption in 1343
this state or services the benefit of which is realized in this 1344
state. 1345

(5) A seller that does not have substantial nexus with 1346
this state, and any affiliated person of the seller, before 1347
selling or leasing tangible personal property or services to a 1348
state agency, shall register with the tax commissioner in the 1349
same manner as a seller described in division (A)(1) of section 1350
5741.17 of the Revised Code. 1351

(6) As used in division (I) of this section: 1352

(a) "Affiliated person" means any person that is a member 1353
of the same controlled group of corporations as the seller or 1354
any other person that, notwithstanding the form of organization, 1355
bears the same ownership relationship to the seller as a 1356
corporation that is a member of the same controlled group of 1357

corporations. 1358

(b) "Controlled group of corporations" has the same 1359
meaning as in section 1563(a) of the Internal Revenue Code. 1360

(c) "State agency" has the same meaning as in section 1.60 1361
of the Revised Code. 1362

(J) "Fiscal officer" means, with respect to a regional 1363
transit authority, the secretary-treasurer thereof, and with 1364
respect to a county which is a transit authority, the fiscal 1365
officer of the county transit board appointed pursuant to 1366
section 306.03 of the Revised Code or, if the board of county 1367
commissioners operates the county transit system, the county 1368
auditor. 1369

(K) "Territory of the transit authority" means all of the 1370
area included within the territorial boundaries of a transit 1371
authority as they from time to time exist. Such territorial 1372
boundaries must at all times include all the area of a single 1373
county or all the area of the most populous county which is a 1374
part of such transit authority. County population shall be 1375
measured by the most recent census taken by the United States 1376
census bureau. 1377

(L) "Transit authority" means a regional transit authority 1378
created pursuant to section 306.31 of the Revised Code or a 1379
county in which a county transit system is created pursuant to 1380
section 306.01 of the Revised Code. For the purposes of this 1381
chapter, a transit authority must extend to at least the entire 1382
area of a single county. A transit authority which includes 1383
territory in more than one county must include all the area of 1384
the most populous county which is a part of such transit 1385
authority. County population shall be measured by the most 1386

recent census taken by the United States census bureau. 1387

(M) "Providing a service" has the same meaning as in 1388
section 5739.01 of the Revised Code. 1389

(N) "Other consumption" includes receiving the benefits of 1390
a service. 1391

(O) "Lease" or "rental" has the same meaning as in section 1392
5739.01 of the Revised Code. 1393

(P) "Certified service provider" has the same meaning as 1394
in section 5740.01 of the Revised Code. 1395

(Q) "Marketplace facilitator" means a person that owns, 1396
operates, or controls a physical or electronic marketplace 1397
through which retail sales or delivery network services, or 1398
both, are facilitated on behalf of one or more marketplace 1399
sellers, or an affiliate of such a person. "Marketplace 1400
facilitator" does not include a person that provides advertising 1401
services, including tangible personal property or services 1402
listed for sale, if the advertising service platform or forum 1403
does not engage directly or indirectly through one or more 1404
affiliated persons in the activities described in division (T) 1405
(2) of this section. 1406

(R) "Marketplace seller" means a person on behalf of which 1407
a marketplace facilitator facilitates the sale of tangible 1408
personal property for storage, use, or consumption in this state 1409
or services the benefit of which are realized in this state, 1410
regardless of whether or not the person has a substantial nexus 1411
with this state. 1412

(S) "Electronic marketplace" includes digital distribution 1413
services, digital distribution platforms, online portals, 1414
application stores, computer software applications, in-app 1415

purchase mechanisms, or other digital products.	1416
(T) A sale is "facilitated" by a marketplace facilitator	1417
on behalf of a marketplace seller if it satisfies divisions (T)	1418
(1), (2), and (3) of this section:	1419
(1) The marketplace facilitator, directly or indirectly,	1420
does any of the following:	1421
(a) Lists, makes available, or advertises the tangible	1422
personal property or services that are the subject of the sale	1423
in a physical or electronic marketplace owned, operated, or	1424
controlled by the marketplace facilitator;	1425
(b) Transmits or otherwise communicates an offer or	1426
acceptance of the sale between the marketplace seller and the	1427
purchaser in a shop, store, booth, catalog, internet site, or	1428
other similar forum;	1429
(c) Owns, rents, licenses, makes available, or operates	1430
any electronic or physical infrastructure or any property,	1431
process, method, copyright, trademark, or patent that connects	1432
the marketplace seller to the purchaser for the purpose of	1433
making sales;	1434
(d) Provides the marketplace in which the sale was made or	1435
otherwise facilitates the sale regardless of ownership or	1436
control of the tangible personal property or services that are	1437
the subject of the sale;	1438
(e) Provides software development or research and	1439
development services directly related to a physical or	1440
electronic marketplace that is involved in one or more of the	1441
activities described in division (T)(1) of this section;	1442
(f) Provides fulfillment or storage services for the	1443

marketplace seller that are related to the tangible personal	1444
property or services that are the subject of the sale;	1445
(g) Sets the price of the sale on behalf of the	1446
marketplace seller;	1447
(h) Provides or offers customer service to the marketplace	1448
seller or the marketplace seller's customers, or accepts or	1449
assists with taking orders, returns, or exchanges of the	1450
tangible personal property or services that are the subject of	1451
the sale;	1452
(i) Brands or otherwise identifies the sale as a sale of	1453
the marketplace facilitator.	1454
(2) The marketplace facilitator, directly or indirectly,	1455
does any of the following:	1456
(a) Collects the price of the tangible personal property	1457
or services sold to the consumer;	1458
(b) Provides payment processing services for the sale;	1459
(c) Collects payment in connection with the sale from the	1460
consumer through terms and conditions, agreements, or	1461
arrangements with a third party, and transmits that payment to	1462
the marketplace seller, regardless of whether the person	1463
collecting and transmitting such payment receives compensation	1464
or other consideration in exchange for the service;	1465
(d) Provides virtual currency that consumers are allowed	1466
or required to use to purchase the tangible personal property or	1467
services that are the subject of the sale.	1468
(3) The subject of the sale is tangible personal property	1469
or services other than lodging by a hotel that is or is to be	1470
furnished to transient guests.	1471

(U) "Delivery network company," "delivery network services," and "local merchant" have the same meanings as in section 5739.01 of the Revised Code. 1472
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Sec. 5741.072. (A) If all of the following conditions are met, a delivery network company that facilitates delivery network services may request a waiver from the requirement in division (E) of section 5741.01 of the Revised Code that a marketplace facilitator be treated as the seller of goods sold by marketplace sellers through the marketplace facilitator: 1475
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(1) The delivery network company is current on all taxes, fees, and charges administered by the department of taxation that are not subject to a bona fide dispute. 1481
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(2) The delivery network company has not, within the twelve months preceding the request for waiver, requested that a previously granted waiver be canceled or had a previously granted waiver revoked by the commissioner. 1484
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(3) The delivery network company has not violated division (B) of section 5739.30 of the Revised Code. 1488
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A waiver granted under this section does not affect the delivery network company's status as the seller of its delivery network services. 1490
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(B) A delivery network company that requests a waiver pursuant to this section shall make the request to the tax commissioner on a form prescribed by the commissioner. A waiver that is not affirmatively granted or denied by the commissioner within thirty days of the date it was filed with the commissioner is automatically granted. A waiver that is granted by the commissioner or granted automatically is effective on and after the first day of the first month that begins at least 1493
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thirty days after the commissioner grants the waiver or the 1501
waiver is automatically granted. The waiver is valid until the 1502
first day of the first month that begins at least sixty days 1503
after it is revoked by the commissioner or canceled by the 1504
delivery network company. 1505

(C) (1) When a waiver is granted pursuant to division (B) 1506
of this section, the commissioner shall notify the delivery 1507
network company, which shall then notify each local merchant 1508
operating on the delivery network company's physical or 1509
electronic marketplace that the local merchant shall be 1510
considered a vendor pursuant to division (C) of section 5739.01 1511
of the Revised Code or a seller pursuant to division (E) of 1512
section 5741.01 of the Revised Code, as applicable, with respect 1513
to the local products sold by the seller through the delivery 1514
network company's physical or electronic marketplace. 1515

(2) A delivery network company that has been granted a 1516
waiver under this section may cancel the waiver by sending 1517
notice to the commissioner. The commissioner may revoke a waiver 1518
if the commissioner determines that any of the conditions 1519
described in divisions (A) (1) to (3) of this section are no 1520
longer met by the delivery network company. The commissioner 1521
shall notify the delivery network company upon revoking a 1522
waiver. A delivery network for which a waiver has been canceled 1523
or revoked shall promptly notify each local merchant operating 1524
on the delivery network company's physical or electronic 1525
marketplace that its waiver has been canceled or revoked. 1526

(D) Notwithstanding section 5703.21 of the Revised Code, 1527
the commissioner may divulge information related to the status 1528
of a waiver granted to a delivery network company if requested 1529
by a local merchant operating on the delivery network company's 1530

physical or electronic marketplace. 1531

(E) The commissioner may adopt any rules necessary to 1532
administer this section. 1533

Section 2. That existing sections 5739.01 and 5741.01 of 1534
the Revised Code are hereby repealed. 1535