

As Introduced

**133rd General Assembly
Regular Session
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H. B. No. 175

Representative Antani

A BILL

To amend section 5739.02 of the Revised Code to 1
exempt from sales and use tax things used 2
primarily to move completed manufactured 3
products or general merchandise. 4

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

Section 1. That section 5739.02 of the Revised Code be 5
amended to read as follows: 6

Sec. 5739.02. For the purpose of providing revenue with 7
which to meet the needs of the state, for the use of the general 8
revenue fund of the state, for the purpose of securing a 9
thorough and efficient system of common schools throughout the 10
state, for the purpose of affording revenues, in addition to 11
those from general property taxes, permitted under 12
constitutional limitations, and from other sources, for the 13
support of local governmental functions, and for the purpose of 14
reimbursing the state for the expense of administering this 15
chapter, an excise tax is hereby levied on each retail sale made 16
in this state. 17

(A) (1) The tax shall be collected as provided in section 18
5739.025 of the Revised Code. The rate of the tax shall be five 19

and three-fourths per cent. The tax applies and is collectible 20
when the sale is made, regardless of the time when the price is 21
paid or delivered. 22

(2) In the case of the lease or rental, with a fixed term 23
of more than thirty days or an indefinite term with a minimum 24
period of more than thirty days, of any motor vehicles designed 25
by the manufacturer to carry a load of not more than one ton, 26
watercraft, outboard motor, or aircraft, or of any tangible 27
personal property, other than motor vehicles designed by the 28
manufacturer to carry a load of more than one ton, to be used by 29
the lessee or renter primarily for business purposes, the tax 30
shall be collected by the vendor at the time the lease or rental 31
is consummated and shall be calculated by the vendor on the 32
basis of the total amount to be paid by the lessee or renter 33
under the lease agreement. If the total amount of the 34
consideration for the lease or rental includes amounts that are 35
not calculated at the time the lease or rental is executed, the 36
tax shall be calculated and collected by the vendor at the time 37
such amounts are billed to the lessee or renter. In the case of 38
an open-end lease or rental, the tax shall be calculated by the 39
vendor on the basis of the total amount to be paid during the 40
initial fixed term of the lease or rental, and for each 41
subsequent renewal period as it comes due. As used in this 42
division, "motor vehicle" has the same meaning as in section 43
4501.01 of the Revised Code, and "watercraft" includes an 44
outdrive unit attached to the watercraft. 45

A lease with a renewal clause and a termination penalty or 46
similar provision that applies if the renewal clause is not 47
exercised is presumed to be a sham transaction. In such a case, 48
the tax shall be calculated and paid on the basis of the entire 49
length of the lease period, including any renewal periods, until 50

the termination penalty or similar provision no longer applies. 51
The taxpayer shall bear the burden, by a preponderance of the 52
evidence, that the transaction or series of transactions is not 53
a sham transaction. 54

(3) Except as provided in division (A)(2) of this section, 55
in the case of a sale, the price of which consists in whole or 56
in part of the lease or rental of tangible personal property, 57
the tax shall be measured by the installments of that lease or 58
rental. 59

(4) In the case of a sale of a physical fitness facility 60
service or recreation and sports club service, the price of 61
which consists in whole or in part of a membership for the 62
receipt of the benefit of the service, the tax applicable to the 63
sale shall be measured by the installments thereof. 64

(B) The tax does not apply to the following: 65

(1) Sales to the state or any of its political 66
subdivisions, or to any other state or its political 67
subdivisions if the laws of that state exempt from taxation 68
sales made to this state and its political subdivisions; 69

(2) Sales of food for human consumption off the premises 70
where sold; 71

(3) Sales of food sold to students only in a cafeteria, 72
dormitory, fraternity, or sorority maintained in a private, 73
public, or parochial school, college, or university; 74

(4) Sales of newspapers and sales or transfers of 75
magazines distributed as controlled circulation publications; 76

(5) The furnishing, preparing, or serving of meals without 77
charge by an employer to an employee provided the employer 78

records the meals as part compensation for services performed or 79
work done; 80

(6) Sales of motor fuel upon receipt, use, distribution, 81
or sale of which in this state a tax is imposed by the law of 82
this state, but this exemption shall not apply to the sale of 83
motor fuel on which a refund of the tax is allowable under 84
division (A) of section 5735.14 of the Revised Code; and the tax 85
commissioner may deduct the amount of tax levied by this section 86
applicable to the price of motor fuel when granting a refund of 87
motor fuel tax pursuant to division (A) of section 5735.14 of 88
the Revised Code and shall cause the amount deducted to be paid 89
into the general revenue fund of this state; 90

(7) Sales of natural gas by a natural gas company or 91
municipal gas utility, of water by a water-works company, or of 92
steam by a heating company, if in each case the thing sold is 93
delivered to consumers through pipes or conduits, and all sales 94
of communications services by a telegraph company, all terms as 95
defined in section 5727.01 of the Revised Code, and sales of 96
electricity delivered through wires; 97

(8) Casual sales by a person, or auctioneer employed 98
directly by the person to conduct such sales, except as to such 99
sales of motor vehicles, watercraft or outboard motors required 100
to be titled under section 1548.06 of the Revised Code, 101
watercraft documented with the United States coast guard, 102
snowmobiles, and all-purpose vehicles as defined in section 103
4519.01 of the Revised Code; 104

(9) (a) Sales of services or tangible personal property, 105
other than motor vehicles, mobile homes, and manufactured homes, 106
by churches, organizations exempt from taxation under section 107
501(c) (3) of the Internal Revenue Code of 1986, or nonprofit 108

organizations operated exclusively for charitable purposes as 109
defined in division (B) (12) of this section, provided that the 110
number of days on which such tangible personal property or 111
services, other than items never subject to the tax, are sold 112
does not exceed six in any calendar year, except as otherwise 113
provided in division (B) (9) (b) of this section. If the number of 114
days on which such sales are made exceeds six in any calendar 115
year, the church or organization shall be considered to be 116
engaged in business and all subsequent sales by it shall be 117
subject to the tax. In counting the number of days, all sales by 118
groups within a church or within an organization shall be 119
considered to be sales of that church or organization. 120

(b) The limitation on the number of days on which tax- 121
exempt sales may be made by a church or organization under 122
division (B) (9) (a) of this section does not apply to sales made 123
by student clubs and other groups of students of a primary or 124
secondary school, or a parent-teacher association, booster 125
group, or similar organization that raises money to support or 126
fund curricular or extracurricular activities of a primary or 127
secondary school. 128

(c) Divisions (B) (9) (a) and (b) of this section do not 129
apply to sales by a noncommercial educational radio or 130
television broadcasting station. 131

(10) Sales not within the taxing power of this state under 132
the Constitution or laws of the United States or the 133
Constitution of this state; 134

(11) Except for transactions that are sales under division 135
(B) (3) (r) of section 5739.01 of the Revised Code, the 136
transportation of persons or property, unless the transportation 137
is by a private investigation and security service; 138

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

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

operation of a community or area center in which presentations 170
in music, dramatics, the arts, and related fields are made in 171
order to foster public interest and education therein; the 172
production of performances in music, dramatics, and the arts; or 173
the promotion of education by an organization engaged in 174
carrying on research in, or the dissemination of, scientific and 175
technological knowledge and information primarily for the 176
public. 177

Nothing in this division shall be deemed to exempt sales 178
to any organization for use in the operation or carrying on of a 179
trade or business, or sales to a home for the aged for use in 180
the operation of independent living facilities as defined in 181
division (A) of section 5709.12 of the Revised Code. 182

(13) Building and construction materials and services sold 183
to construction contractors for incorporation into a structure 184
or improvement to real property under a construction contract 185
with this state or a political subdivision of this state, or 186
with the United States government or any of its agencies; 187
building and construction materials and services sold to 188
construction contractors for incorporation into a structure or 189
improvement to real property that are accepted for ownership by 190
this state or any of its political subdivisions, or by the 191
United States government or any of its agencies at the time of 192
completion of the structures or improvements; building and 193
construction materials sold to construction contractors for 194
incorporation into a horticulture structure or livestock 195
structure for a person engaged in the business of horticulture 196
or producing livestock; building materials and services sold to 197
a construction contractor for incorporation into a house of 198
public worship or religious education, or a building used 199
exclusively for charitable purposes under a construction 200

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

(14) Sales of ships or vessels or rail rolling stock used 225
or to be used principally in interstate or foreign commerce, and 226
repairs, alterations, fuel, and lubricants for such ships or 227
vessels or rail rolling stock; 228

(15) Sales to persons primarily engaged in any of the 229
activities mentioned in division (B) (42) (a), (g), or (h) of this 230
section, to persons engaged in making retail sales, or to 231

persons who purchase for sale from a manufacturer tangible	232
personal property that was produced by the manufacturer in	233
accordance with specific designs provided by the purchaser, of	234
packages, including material, labels, and parts for packages,	235
and of machinery, equipment, and material for use primarily in	236
packaging tangible personal property produced for sale,	237
including any machinery, equipment, and supplies used to make	238
labels or packages, to prepare packages or products for	239
labeling, or to label packages or products, by or on the order	240
of the person doing the packaging, or sold at retail. "Packages"	241
includes bags, baskets, cartons, crates, boxes, cans, bottles,	242
bindings, wrappings, and other similar devices and containers,	243
but does not include motor vehicles or bulk tanks, trailers, or	244
similar devices attached to motor vehicles. "Packaging" means	245
placing in a package. Division (B) (15) of this section does not	246
apply to persons engaged in highway transportation for hire.	247
(16) Sales of food to persons using supplemental nutrition	248
assistance program benefits to purchase the food. As used in	249
this division, "food" has the same meaning as in 7 U.S.C. 2012	250
and federal regulations adopted pursuant to the Food and	251
Nutrition Act of 2008.	252
(17) Sales to persons engaged in farming, agriculture,	253
horticulture, or floriculture, of tangible personal property for	254
use or consumption primarily in the production by farming,	255
agriculture, horticulture, or floriculture of other tangible	256
personal property for use or consumption primarily in the	257
production of tangible personal property for sale by farming,	258
agriculture, horticulture, or floriculture; or material and	259
parts for incorporation into any such tangible personal property	260
for use or consumption in production; and of tangible personal	261
property for such use or consumption in the conditioning or	262

holding of products produced by and for such use, consumption, 263
or sale by persons engaged in farming, agriculture, 264
horticulture, or floriculture, except where such property is 265
incorporated into real property; 266

(18) Sales of drugs for a human being that may be 267
dispensed only pursuant to a prescription; insulin as recognized 268
in the official United States pharmacopoeia; urine and blood 269
testing materials when used by diabetics or persons with 270
hypoglycemia to test for glucose or acetone; hypodermic syringes 271
and needles when used by diabetics for insulin injections; 272
epoetin alfa when purchased for use in the treatment of persons 273
with medical disease; hospital beds when purchased by hospitals, 274
nursing homes, or other medical facilities; and medical oxygen 275
and medical oxygen-dispensing equipment when purchased by 276
hospitals, nursing homes, or other medical facilities; 277

(19) Sales of prosthetic devices, durable medical 278
equipment for home use, or mobility enhancing equipment, when 279
made pursuant to a prescription and when such devices or 280
equipment are for use by a human being. 281

(20) Sales of emergency and fire protection vehicles and 282
equipment to nonprofit organizations for use solely in providing 283
fire protection and emergency services, including trauma care 284
and emergency medical services, for political subdivisions of 285
the state; 286

(21) Sales of tangible personal property manufactured in 287
this state, if sold by the manufacturer in this state to a 288
retailer for use in the retail business of the retailer outside 289
of this state and if possession is taken from the manufacturer 290
by the purchaser within this state for the sole purpose of 291
immediately removing the same from this state in a vehicle owned 292

by the purchaser;	293
(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;	294 295 296 297 298
(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;	299 300 301
(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 materials, and "packaging" means placing therein.	302 303 304 305 306 307 308 309 310 311 312 313 314 315 316
(25) (a) Sales of water to a consumer for residential use;	317
(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.	318 319 320 321

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;	322 323
(27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:	324 325 326 327
(a) To prepare food for human consumption for sale;	328
(b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;	329 330 331 332
(c) To clean tangible personal property used to prepare or serve food for human consumption for sale.	333 334
(28) Sales of animals by nonprofit animal adoption services or county humane societies;	335 336
(29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;	337 338 339 340
(30) Sales and installation of agricultural land tile, as defined in division (B) (5) (a) of section 5739.01 of the Revised Code;	341 342 343
(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;	344 345 346
(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	347 348 349

property belonging to others by a person engaged in highway 350
transportation for hire, except for packages and packaging used 351
for the transportation of tangible personal property; 352

(33) Sales to the state headquarters of any veterans' 353
organization in this state that is either incorporated and 354
issued a charter by the congress of the United States or is 355
recognized by the United States veterans administration, for use 356
by the headquarters; 357

(34) Sales to a telecommunications service vendor, mobile 358
telecommunications service vendor, or satellite broadcasting 359
service vendor of tangible personal property and services used 360
directly and primarily in transmitting, receiving, switching, or 361
recording any interactive, one- or two-way electromagnetic 362
communications, including voice, image, data, and information, 363
through the use of any medium, including, but not limited to, 364
poles, wires, cables, switching equipment, computers, and record 365
storage devices and media, and component parts for the tangible 366
personal property. The exemption provided in this division shall 367
be in lieu of all other exemptions under division (B) (42) (a) or 368
(n) of this section to which the vendor may otherwise be 369
entitled, based upon the use of the thing purchased in providing 370
the telecommunications, mobile telecommunications, or satellite 371
broadcasting service. 372

(35) (a) Sales where the purpose of the consumer is to use 373
or consume the things transferred in making retail sales and 374
consisting of newspaper inserts, catalogues, coupons, flyers, 375
gift certificates, or other advertising material that prices and 376
describes tangible personal property offered for retail sale. 377

(b) Sales to direct marketing vendors of preliminary 378
materials such as photographs, artwork, and typesetting that 379

will be used in printing advertising material; and of printed 380
matter that offers free merchandise or chances to win sweepstake 381
prizes and that is mailed to potential customers with 382
advertising material described in division (B) (35) (a) of this 383
section; 384

(c) Sales of equipment such as telephones, computers, 385
facsimile machines, and similar tangible personal property 386
primarily used to accept orders for direct marketing retail 387
sales. 388

(d) Sales of automatic food vending machines that preserve 389
food with a shelf life of forty-five days or less by 390
refrigeration and dispense it to the consumer. 391

For purposes of division (B) (35) of this section, "direct 392
marketing" means the method of selling where consumers order 393
tangible personal property by United States mail, delivery 394
service, or telecommunication and the vendor delivers or ships 395
the tangible personal property sold to the consumer from a 396
warehouse, catalogue distribution center, or similar fulfillment 397
facility by means of the United States mail, delivery service, 398
or common carrier. 399

(36) Sales to a person engaged in the business of 400
horticulture or producing livestock of materials to be 401
incorporated into a horticulture structure or livestock 402
structure; 403

(37) Sales of personal computers, computer monitors, 404
computer keyboards, modems, and other peripheral computer 405
equipment to an individual who is licensed or certified to teach 406
in an elementary or a secondary school in this state for use by 407
that individual in preparation for teaching elementary or 408

secondary school students;	409
(38) Sales to a professional racing team of any of the	410
following:	411
(a) Motor racing vehicles;	412
(b) Repair services for motor racing vehicles;	413
(c) Items of property that are attached to or incorporated	414
in motor racing vehicles, including engines, chassis, and all	415
other components of the vehicles, and all spare, replacement,	416
and rebuilt parts or components of the vehicles; except not	417
including tires, consumable fluids, paint, and accessories	418
consisting of instrumentation sensors and related items added to	419
the vehicle to collect and transmit data by means of telemetry	420
and other forms of communication.	421
(39) Sales of used manufactured homes and used mobile	422
homes, as defined in section 5739.0210 of the Revised Code, made	423
on or after January 1, 2000;	424
(40) Sales of tangible personal property and services to a	425
provider of electricity used or consumed directly and primarily	426
in generating, transmitting, or distributing electricity for use	427
by others, including property that is or is to be incorporated	428
into and will become a part of the consumer's production,	429
transmission, or distribution system and that retains its	430
classification as tangible personal property after	431
incorporation; fuel or power used in the production,	432
transmission, or distribution of electricity; energy conversion	433
equipment as defined in section 5727.01 of the Revised Code; and	434
tangible personal property and services used in the repair and	435
maintenance of the production, transmission, or distribution	436
system, including only those motor vehicles as are specially	437

designed and equipped for such use. The exemption provided in 438
this division shall be in lieu of all other exemptions in 439
division (B) (42) (a) or (n) of this section to which a provider 440
of electricity may otherwise be entitled based on the use of the 441
tangible personal property or service purchased in generating, 442
transmitting, or distributing electricity. 443

(41) Sales to a person providing services under division 444
(B) (3) (r) of section 5739.01 of the Revised Code of tangible 445
personal property and services used directly and primarily in 446
providing taxable services under that section. 447

(42) Sales where the purpose of the purchaser is to do any 448
of the following: 449

(a) To incorporate the thing transferred as a material or 450
a part into tangible personal property to be produced for sale 451
by manufacturing, assembling, processing, or refining; or to use 452
or consume the thing transferred directly in producing tangible 453
personal property for sale by mining, including, without 454
limitation, the extraction from the earth of all substances that 455
are classed geologically as minerals, or directly in the 456
rendition of a public utility service, except that the sales tax 457
levied by this section shall be collected upon all meals, 458
drinks, and food for human consumption sold when transporting 459
persons. This paragraph does not exempt from "retail sale" or 460
"sales at retail" the sale of tangible personal property that is 461
to be incorporated into a structure or improvement to real 462
property. 463

(b) To hold the thing transferred as security for the 464
performance of an obligation of the vendor; 465

(c) To resell, hold, use, or consume the thing transferred 466

as evidence of a contract of insurance;	467
(d) To use or consume the thing directly in commercial fishing;	468 469
(e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;	470 471 472 473
(f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;	474 475 476 477 478
(g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;	479 480 481
(h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B) (7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;	482 483 484 485 486 487
(i) To use the thing transferred as qualified research and development equipment;	488 489
(j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to	490 491 492 493 494 495

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

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

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

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

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

(o) To use or consume the thing transferred in acquiring, 526
formatting, editing, storing, and disseminating data or 527
information by electronic publishing; 528

(p) To provide the thing transferred to the owner or 529
lessee of a motor vehicle that is being repaired or serviced, if 530
the thing transferred is a rented motor vehicle and the 531
purchaser is reimbursed for the cost of the rented motor vehicle 532
by a manufacturer, warrantor, or provider of a maintenance, 533
service, or other similar contract or agreement, with respect to 534
the motor vehicle that is being repaired or serviced; 535

(q) To use or consume the thing transferred directly in 536
production of crude oil and natural gas for sale. Persons 537
engaged in rendering production services for others are deemed 538
engaged in production. 539

As used in division (B) (42) (q) of this section, 540
"production" means operations and tangible personal property 541
directly used to expose and evaluate an underground reservoir 542
that may contain hydrocarbon resources, prepare the wellbore for 543
production, and lift and control all substances yielded by the 544
reservoir to the surface of the earth. 545

(i) For the purposes of division (B) (42) (q) of this 546
section, the "thing transferred" includes, but is not limited 547
to, any of the following: 548

(I) Services provided in the construction of permanent 549
access roads, services provided in the construction of the well 550
site, and services provided in the construction of temporary 551
impoundments; 552

(II) Equipment and rigging used for the specific purpose 553
of creating with integrity a wellbore pathway to underground 554

reservoirs;	555
(III) Drilling and workover services used to work within a subsurface wellbore, and tangible personal property directly used in providing such services;	556 557 558
(IV) Casing, tubulars, and float and centralizing equipment;	559 560
(V) Trailers to which production equipment is attached;	561
(VI) Well completion services, including cementing of casing, and tangible personal property directly used in providing such services;	562 563 564
(VII) Wireline evaluation, mud logging, and perforation services, and tangible personal property directly used in providing such services;	565 566 567
(VIII) Reservoir stimulation, hydraulic fracturing, and acidizing services, and tangible personal property directly used in providing such services, including all material pumped downhole;	568 569 570 571
(IX) Pressure pumping equipment;	572
(X) Artificial lift systems equipment;	573
(XI) Wellhead equipment and well site equipment used to separate, stabilize, and control hydrocarbon phases and produced water;	574 575 576
(XII) Tangible personal property directly used to control production equipment.	577 578
(ii) For the purposes of division (B) (42) (q) of this section, the "thing transferred" does not include any of the following:	579 580 581

(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;	582 583 584
(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;	585 586 587
(III) Tangible personal property used primarily in preparing, installing, or reclaiming foundations for drilling or pumping equipment or well stimulation material tanks;	588 589 590
(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;	591 592 593 594
(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;	595 596 597 598
(VI) Tangible personal property that is to be incorporated into a structure or improvement to real property;	599 600
(VII) Well site fencing, lighting, or security systems;	601
(VIII) Communication devices or services;	602
(IX) Office supplies;	603
(X) Trailers used as offices or lodging;	604
(XI) Motor vehicles of any kind;	605
(XII) Tangible personal property used primarily for the storage of drilling byproducts and fuel not used for production;	606 607
(XIII) Tangible personal property used primarily as a	608

safety device; 609

(XIV) Data collection or monitoring devices; 610

(XV) Access ladders, stairs, or platforms attached to 611
storage tanks. 612

The enumeration of tangible personal property in division 613
(B) (42) (q) (ii) of this section is not intended to be exhaustive, 614
and any tangible personal property not so enumerated shall not 615
necessarily be construed to be a "thing transferred" for the 616
purposes of division (B) (42) (q) of this section. 617

The commissioner shall adopt and promulgate rules under 618
sections 119.01 to 119.13 of the Revised Code that the 619
commissioner deems necessary to administer division (B) (42) (q) 620
of this section. 621

As used in division (B) (42) of this section, "thing" 622
includes all transactions included in divisions (B) (3) (a), (b), 623
and (e) of section 5739.01 of the Revised Code. 624

(43) Sales conducted through a coin operated device that 625
activates vacuum equipment or equipment that dispenses water, 626
whether or not in combination with soap or other cleaning agents 627
or wax, to the consumer for the consumer's use on the premises 628
in washing, cleaning, or waxing a motor vehicle, provided no 629
other personal property or personal service is provided as part 630
of the transaction. 631

(44) Sales of replacement and modification parts for 632
engines, airframes, instruments, and interiors in, and paint 633
for, aircraft used primarily in a fractional aircraft ownership 634
program, and sales of services for the repair, modification, and 635
maintenance of such aircraft, and machinery, equipment, and 636
supplies primarily used to provide those services. 637

(45) Sales of telecommunications service that is used 638
directly and primarily to perform the functions of a call 639
center. As used in this division, "call center" means any 640
physical location where telephone calls are placed or received 641
in high volume for the purpose of making sales, marketing, 642
customer service, technical support, or other specialized 643
business activity, and that employs at least fifty individuals 644
that engage in call center activities on a full-time basis, or 645
sufficient individuals to fill fifty full-time equivalent 646
positions. 647

(46) Sales by a telecommunications service vendor of 900 648
service to a subscriber. This division does not apply to 649
information services, as defined in division (FF) of section 650
5739.01 of the Revised Code. 651

(47) Sales of value-added non-voice data service. This 652
division does not apply to any similar service that is not 653
otherwise a telecommunications service. 654

(48) (a) Sales of machinery, equipment, and software to a 655
qualified direct selling entity for use in a warehouse or 656
distribution center primarily for storing, transporting, or 657
otherwise handling inventory that is held for sale to 658
independent salespersons who operate as direct sellers and that 659
is held primarily for distribution outside this state; 660

(b) As used in division (B) (48) (a) of this section: 661

(i) "Direct seller" means a person selling consumer 662
products to individuals for personal or household use and not 663
from a fixed retail location, including selling such product at 664
in-home product demonstrations, parties, and other one-on-one 665
selling. 666

(ii) "Qualified direct selling entity" means an entity 667
selling to direct sellers at the time the entity enters into a 668
tax credit agreement with the tax credit authority pursuant to 669
section 122.17 of the Revised Code, provided that the agreement 670
was entered into on or after January 1, 2007. Neither 671
contingencies relevant to the granting of, nor later 672
developments with respect to, the tax credit shall impair the 673
status of the qualified direct selling entity under division (B) 674
(48) of this section after execution of the tax credit agreement 675
by the tax credit authority. 676

(c) Division (B) (48) of this section is limited to 677
machinery, equipment, and software first stored, used, or 678
consumed in this state within the period commencing June 24, 679
2008, and ending on the date that is five years after that date. 680

(49) Sales of materials, parts, equipment, or engines used 681
in the repair or maintenance of aircraft or avionics systems of 682
such aircraft, and sales of repair, remodeling, replacement, or 683
maintenance services in this state performed on aircraft or on 684
an aircraft's avionics, engine, or component materials or parts. 685
As used in division (B) (49) of this section, "aircraft" means 686
aircraft of more than six thousand pounds maximum certified 687
takeoff weight or used exclusively in general aviation. 688

(50) Sales of full flight simulators that are used for 689
pilot or flight-crew training, sales of repair or replacement 690
parts or components, and sales of repair or maintenance services 691
for such full flight simulators. "Full flight simulator" means a 692
replica of a specific type, or make, model, and series of 693
aircraft cockpit. It includes the assemblage of equipment and 694
computer programs necessary to represent aircraft operations in 695
ground and flight conditions, a visual system providing an out- 696

of-the-cockpit view, and a system that provides cues at least 697
equivalent to those of a three-degree-of-freedom motion system, 698
and has the full range of capabilities of the systems installed 699
in the device as described in appendices A and B of part 60 of 700
chapter 1 of title 14 of the Code of Federal Regulations. 701

(51) Any transfer or lease of tangible personal property 702
between the state and JobsOhio in accordance with section 703
4313.02 of the Revised Code. 704

(52) (a) Sales to a qualifying corporation. 705

(b) As used in division (B) (52) of this section: 706

(i) "Qualifying corporation" means a nonprofit corporation 707
organized in this state that leases from an eligible county 708
land, buildings, structures, fixtures, and improvements to the 709
land that are part of or used in a public recreational facility 710
used by a major league professional athletic team or a class A 711
to class AAA minor league affiliate of a major league 712
professional athletic team for a significant portion of the 713
team's home schedule, provided the following apply: 714

(I) The facility is leased from the eligible county 715
pursuant to a lease that requires substantially all of the 716
revenue from the operation of the business or activity conducted 717
by the nonprofit corporation at the facility in excess of 718
operating costs, capital expenditures, and reserves to be paid 719
to the eligible county at least once per calendar year. 720

(II) Upon dissolution and liquidation of the nonprofit 721
corporation, all of its net assets are distributable to the 722
board of commissioners of the eligible county from which the 723
corporation leases the facility. 724

(ii) "Eligible county" has the same meaning as in section 725

307.695 of the Revised Code.	726
(53) Sales to or by a cable service provider, video	727
service provider, or radio or television broadcast station	728
regulated by the federal government of cable service or	729
programming, video service or programming, audio service or	730
programming, or electronically transferred digital audiovisual	731
or audio work. As used in division (B) (53) of this section,	732
"cable service" and "cable service provider" have the same	733
meanings as in section 1332.01 of the Revised Code, and "video	734
service," "video service provider," and "video programming" have	735
the same meanings as in section 1332.21 of the Revised Code.	736
(54) Sales of investment metal bullion and investment	737
coins. "Investment metal bullion" means any bullion described in	738
section 408(m) (3) (B) of the Internal Revenue Code, regardless of	739
whether that bullion is in the physical possession of a trustee.	740
"Investment coin" means any coin composed primarily of gold,	741
silver, platinum, or palladium.	742
(55) Sales of a digital audio work electronically	743
transferred for delivery through use of a machine, such as a	744
juke box, that does all of the following:	745
(a) Accepts direct payments to operate;	746
(b) Automatically plays a selected digital audio work for	747
a single play upon receipt of a payment described in division	748
(B) (55) (a) of this section;	749
(c) Operates exclusively for the purpose of playing	750
digital audio works in a commercial establishment.	751
(56) (a) Sales of the following occurring on the first	752
Friday of August and the following Saturday and Sunday of each	753
year, beginning in 2018:	754

(i) An item of clothing, the price of which is seventy-	755
five dollars or less;	756
(ii) An item of school supplies, the price of which is	757
twenty dollars or less;	758
(iii) An item of school instructional material, the price	759
of which is twenty dollars or less.	760
(b) As used in division (B) (56) of this section:	761
(i) "Clothing" means all human wearing apparel suitable	762
for general use. "Clothing" includes, but is not limited to,	763
aprons, household and shop; athletic supporters; baby receiving	764
blankets; bathing suits and caps; beach capes and coats; belts	765
and suspenders; boots; coats and jackets; costumes; diapers,	766
children and adult, including disposable diapers; earmuffs;	767
footlets; formal wear; garters and garter belts; girdles; gloves	768
and mittens for general use; hats and caps; hosiery; insoles for	769
shoes; lab coats; neckties; overshoes; pantyhose; rainwear;	770
rubber pants; sandals; scarves; shoes and shoe laces; slippers;	771
sneakers; socks and stockings; steel-toed shoes; underwear;	772
uniforms, athletic and nonathletic; and wedding apparel.	773
"Clothing" does not include items purchased for use in a trade	774
or business; clothing accessories or equipment; protective	775
equipment; sports or recreational equipment; belt buckles sold	776
separately; costume masks sold separately; patches and emblems	777
sold separately; sewing equipment and supplies including, but	778
not limited to, knitting needles, patterns, pins, scissors,	779
sewing machines, sewing needles, tape measures, and thimbles;	780
and sewing materials that become part of "clothing" including,	781
but not limited to, buttons, fabric, lace, thread, yarn, and	782
zippers.	783

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

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

(57) 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) ~~(56)~~ (57) 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. 815
816

(58) (a) Sales of tangible personal property to a 817
qualifying business used primarily by that business for any of 818
the following: 819

(i) Transporting completed products from the manufacturing 820
facility in which those products were manufactured to a 821
destination from which the product will be sold at retail or a 822
destination designated by the consumer to which those products 823
were sold at retail; 824

(ii) Transporting general merchandise or grocery products 825
from one location within a distribution facility to another 826
location from which the merchandise or products will be 827
transported from that facility. 828

(iii) Powering or charging tangible personal property used 829
as described in division (B) (58) (a) (i) or (ii) of this section. 830

(b) As used in division (B) (58) of this section: 831

(i) "Qualifying business" means a person that is 832
classified as being in the transportation and warehousing sector 833
or the warehouse club and supercenter sector by the north 834
American industrial classification system, or a person in that 835
person's affiliated group, and that person or affiliate is 836
engaged in transporting tangible personal property in trucks 837
operated and either owned or leased by the person or affiliate 838
to destinations outside this state. 839

(ii) "Truck" means any motor vehicle that has motor power 840
and is designed and used for carrying merchandise or freight, or 841
that is used as a commercial tractor. "Truck" includes a motor 842
vehicle powered by one or more alternative fuels provided it is 843

<u>designed and used as described in this division.</u>	844
<u>(iii) "Completed product" and "manufacturing facility"</u>	845
<u>have the same meanings as in section 5739.011 of the Revised</u>	846
<u>Code.</u>	847
<u>(iv) "Alternative fuel" has the same meaning as in section</u>	848
<u>125.831 of the Revised Code.</u>	849
<u>(v) "Motor vehicle" and "commercial tractor" have the same</u>	850
<u>meanings as in section 4501.01 of the Revised Code.</u>	851
<u>(vi) "Affiliated group" has the same meaning as in</u>	852
<u>division (B) (3) (e) of section 5739.01 of the Revised Code.</u>	853
(C) For the purpose of the proper administration of this	854
chapter, and to prevent the evasion of the tax, it is presumed	855
that all sales made in this state are subject to the tax until	856
the contrary is established.	857
(D) The levy of this tax on retail sales of recreation and	858
sports club service shall not prevent a municipal corporation	859
from levying any tax on recreation and sports club dues or on	860
any income generated by recreation and sports club dues.	861
(E) The tax collected by the vendor from the consumer	862
under this chapter is not part of the price, but is a tax	863
collection for the benefit of the state, and of counties levying	864
an additional sales tax pursuant to section 5739.021 or 5739.026	865
of the Revised Code and of transit authorities levying an	866
additional sales tax pursuant to section 5739.023 of the Revised	867
Code. Except for the discount authorized under section 5739.12	868
of the Revised Code and the effects of any rounding pursuant to	869
section 5703.055 of the Revised Code, no person other than the	870
state or such a county or transit authority shall derive any	871
benefit from the collection or payment of the tax levied by this	872

section or section 5739.021, 5739.023, or 5739.026 of the Revised Code. 873
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Section 2. That existing section 5739.02 of the Revised Code is hereby repealed. 875
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Section 3. The amendment by this act of section 5739.02 of the Revised Code applies on and after the first day of the first month that begins at least thirty days after the effective date of this section. 877
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